

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA) 2:19-cr-00350-JD-1
Plaintiff,) 2:19-cr-00350-JD-2
vs.) 2:19-cr-00350-JD-3
) Philadelphia, PA
DONNIE SMITH, ABID)
STEVENS AND MAURICE QUINN) January 30, 2020
Defendant.) 9:36 a.m.-7:01 p.m.

JURY TRIAL - DAY FOUR

BEFORE THE HONORABLE JAN E. DUBOIS,
UNITED STATES DISTRICT JUDGE

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1 P R O C E E D I N G S

2 THE COURT: Good morning, everyone.

3 MR. ECKERT: Good morning.

4 MR. PATTERSON: Good morning, Your
5 Honor.

6 MR. WITTELS: Good morning.

7 MS. MEEHAN: Good morning.

8 THE COURT: Be seated, please.

9 (Pause)

10 THE COURT: Is the Government ready to
11 proceed, Ms. Martin?

12 MS. MARTIN: Your Honor, I believe Mr.
13 Sanchez is on cross. He's here.

14 THE COURT: Yes. You're absolutely
15 right.

16 Are we ready to proceed on the issue,
17 not immediately, on the issue that we addressed
18 yesterday with regard to Exhibit 5b, the 911 call?

19 MS. MARTIN: Would you like additional
20 argument on that, Your Honor?

21 THE COURT: No. I think we'll hear the
22 evidence and then have brief, operative word, brief
23 argument.

24 MS. MARTIN: Okay. I think that there
25 might be an additional, an additional objection by Ms.

1 Meehan to the cell phone records custodian, which is
2 the evidence that you wanted to hear first before you
3 decided whether or not the 911 call would come in.

4 THE COURT: Well, I want to hear all
5 the evidence that you consider to be foundational, and
6 then I'll hear brief argument, including whatever Ms.
7 Meehan has to say.

8 MS. MEEHAN: Thank you, Your Honor.

9 MS. MARTIN: Okay. Your Honor, you're
10 saying right now you would like me to summarize all of
11 it?

12 THE COURT: No. I don't want you to do
13 anything except tell me that you're ready to go and is
14 your witness in the --

15 MR. ECKERT: Yes, Your Honor. I'll ask
16 him to step in, if I may.

17 THE COURT: Fine.

18 MR. ECKERT: Thank you.

19 MS. MARTIN: Your Honor, I think that
20 Ms. Meehan has an objection to that testimony coming
21 in at all --

22 MS. MEEHAN: Uh-huh.

23 MS. MARTIN: -- with --

24 THE COURT: Which --

25 MS. MARTIN: -- regard to --

1 THE COURT: Now wait a minute. Not the
2 testimony of the witness --

3 MS. MEEHAN: No, not the testimony --

4 THE COURT: -- on the stand.

5 MS. MEEHAN: -- on the stand.

6 THE COURT: We're not going to do
7 piecemeal arguments, so you don't have to say anything
8 now.

9 MS. MARTIN: Okay.

10 THE COURT: Maybe I didn't make myself
11 clear. You're going to present the evidence. If
12 there's an objection, I'll hear it. If I hear the
13 evidence, I'll hear argument afterwards and I'll rule.
14 That's what I plan to do.

15 MS. MEEHAN: Well, Your Honor, I --

16 MR. PATTERSON: Your Honor --

17 MS. MEEHAN: -- I was mislead by the
18 Government last week on behalf of Mr. Quinn, so I
19 would have a motion right now to preclude any mention
20 of Mr. Quinn's number coming in through the telephone
21 records witness and I would explain that at an
22 appropriate time. If you wish to hear argument now,
23 that's fine. If you wish to hear it after Mr. --

24 THE COURT: No. I said three times --

25 MS. MEEHAN: -- Sanchez --

1 THE COURT: -- I want to finish with
2 the witness --

3 MS. MEEHAN: Very well.

4 THE COURT: -- who is on the witness
5 stand.

6 MS. MEEHAN: Okay. And then we --

7 THE COURT: And if you have an argument
8 that you think should precede any testimony --

9 MS. MEEHAN: Not of Mr. Sanchez, Your
10 Honor. This has to do --

11 THE COURT: I'm -- no. I'm not --

12 MS. MEEHAN: -- with the phone record.

13 THE COURT: No.

14 MS. MEEHAN: Sorry.

15 THE COURT: I'm not talking about
16 Sanchez. We're going to finish with Sanchez and then
17 we're going to present whatever witnesses the
18 Government has to present.

19 If you want to raise an issue, an
20 objection before the testimony --

21 MS. MEEHAN: Yes, please.

22 THE COURT: -- make it --

23 MS. MEEHAN: Yes, please.

24 THE COURT: -- and I'll rule.

25 Otherwise --

1 MS. MEEHAN: Thank you, Your Honor.

2 THE COURT: -- I'll hear the testimony
3 and then I'll rule on the admissibility of the 911
4 call.

5 MS. MEEHAN: Very well. Thank you,
6 Your Honor.

7 MR. PATTERSON: Your Honor, I have an
8 issue with the -- if the next witness could please
9 step out for a second, I have something to address.

10 (Pause)

11 THE COURT: Yes.

12 MR. PATTERSON: Your Honor, if I may --
13 and, again, I am counsel for Donnie Smith. I am here
14 to represent him. I am here to address any of the
15 concerns he may have for the record for maybe future
16 review.

17 So in that regard he requested me to
18 ask the Court that he was -- he believes that when
19 witnesses are testifying, that on cross-examination
20 before they answer they are looking at the
21 Government's counsel tables in which he believes might
22 be possible gestures with respect to how they answer.

23 Again, I am addressing this per his
24 request.

25 THE COURT: I'm looking at Government

1 counsel all the time. I'm looking at all of the --
2 you attorneys all the time. I've seen no gestures. I
3 have seen no suggestion of answers. Your witness --
4 your client is raising his hand.

5 MR. SMITH: Yeah.

6 THE COURT: Do you wish -- no. Wait a
7 minute. Do you wish him to speak?

8 MR. PATTERSON: I just need to speak
9 with him.

10 (Pause)

11 MR. PATTERSON: Your Honor, I'm
12 satisfied with the record that I made.

13 THE COURT: All right. Let's put Mr.
14 Sanchez back on the stand. Where were we? I did not
15 make a note. Who was cross-examining, Mr. Wittels?

16 THE CLERK: Mr. Wittels.

17 THE COURT: Yes.

18 MR. ECKERT: Again, may I step out,
19 Your Honor, just to have the witness --

20 THE COURT: Yes.

21 (Pause)

22 THE COURT: Guys, before we proceed,
23 can we get some paper towels over here? The cup of
24 water got knocked over when Mr. Smith was gesturing.

25 (Pause)

1 MS. MARTIN: Your Honor, while there's
2 a delay may I speak to Ms. Meehan?

3 THE COURT: Yes.

4 MS. MARTIN: Thank you.

5 (Pause)

6 THE CLERK: Are we prepared for the
7 jury?

8 THE COURT OFFICER: Yes.

9 THE COURT: Are we cleaned up?

10 THE CLERK: No, Your Honor. Oh, they
11 are? Sorry.

12 THE COURT: Mr. Wittels, have you
13 finished mopping up?

14 MR. WITTELS: Yes, Judge. Thank you.

15 (Pause)

16 MS. MEEHAN: Are you waiting for us,
17 Your Honor? I apologize.

18 THE COURT: I'm -- I was just waiting
19 for you to let me know when --

20 MS. MEEHAN: I'm sorry.

21 THE COURT: -- how long you're going to
22 be?

23 MS. MEEHAN: I -- I'm not sure that
24 we're going to be able to reach an agreement on this.

25 THE COURT: All right. Well, then

1 fine.

2 MS. MEEHAN: Very well.

3 THE COURT: Well, it's not this
4 witness's testimony.

5 MS. MEEHAN: No. No, Your Honor.

6 THE COURT: So we'll proceed.

7 MS. MEEHAN: Very well. Thank you.

8 THE COURT: And I'll be able to rule
9 quickly, I suspect.

10 All right. Let's bring Mr. Sanchez is
11 here. We ready to proceed with the jury, Mr. Eckert?

12 MR. ECKERT: I'm sorry, Your Honor.

13 THE COURT: Are you ready to proceed?

14 MR. ECKERT: We are. Thank you. Yes.

15 THE COURT: All right. Everyone else
16 ready, Mr. Wittels?

17 MR. WITTELS: Yes, Judge.

18 THE COURT: Someone has to bring the
19 jury in.

20 (Pause)

21 THE COURT OFFICER: All rise.

22 (Jury present)

23 THE COURT: Thank you. Any other --
24 thank you.

25 Good morning, everybody. Please be

1 seated.

2 (A chorus of good morning.)

3 THE COURT: Mr. Sanchez, I remind you
4 that you are still under oath.

5 Mr. Wittels, you may begin your cross-
6 examination.

7 MR. WITTELS: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. WITTELS:

10 Q. Good morning, Mr. Sanchez. How are you?

11 A. Good morning. Good. How are you?

12 Q. Thank you.

13 I represent Abid Stevens, the man in the
14 plaid shirt.

15 A. Yes.

16 Q. I don't represent anybody else, just him.
17 Okay.

18 A. Okay.

19 Q. So I'm going to ask you some questions. I
20 know you spent a long time on the stand yesterday and
21 it's a tiring experience, so I'll try and go right to
22 the point if I may. Okay.

23 A. Okay. Thank you.

24 Q. I think you told us that you went to the
25 tenth grade here in Philadelphia; is that correct?

1 A. Yes.

2 Q. That you can read -- can you read English?

3 A. A little bit.

4 Q. And can you write English?

5 A. No.

6 Q. Okay. But you speak and understand English
7 just fine?

8 A. Yes.

9 Q. Okay. And I think you told us that Joel
10 understands some English?

11 A. A little bit. A --

12 Q. Yeah.

13 A. -- little bit.

14 Q. Enough to get by?

15 A. Not even that.

16 Q. Uh-huh. Okay. And that Ezaliza (ph) is
17 your baby --

18 A. Momma.

19 Q. -- is your momma (sic)?

20 A. Yes.

21 Q. Yeah. Are you guys still together?

22 A. No.

23 Q. At the time of this robbery -- of this
24 incident, this argument, were you together?

25 A. No.

1 Q. Okay. But you still care about her?

2 A. Yes.

3 Q. Right. Did you have a cell phone that day?

4 A. Yes.

5 Q. And it was working? You could use it if you
6 needed to?

7 A. Yes.

8 Q. Okay. You wouldn't let your baby momma walk
9 into an armed robbery, would you?

10 A. No.

11 Q. No. You wouldn't want her to get in a
12 situation where she might get hurt, would you?

13 A. No.

14 Q. In fact, you would do whatever you could to
15 prevent her walking into that kind of situation,
16 wouldn't you?

17 A. Yes.

18 Q. Okay. Now during the course of this
19 argument, did you ever feel the need to call the
20 police?

21 A. No. No.

22 Q. Why is that?

23 A. It was an argument. It got out of hand
24 quick. I ain't got no chance.

25 Q. And then it got resolved?

1 A. And I didn't have my phone with me. It was
2 in the kitchen --

3 Q. Uh-huh.

4 A. -- where I work at.

5 Q. But you could have gone and gotten your
6 phone, gone to the kitchen and called 911, right?

7 A. I guess. I didn't call 911. I didn't know
8 the exact address of the store.

9 Q. Okay. So this argument you said got out of
10 hand?

11 A. Yes.

12 Q. And then it got resolved, right?

13 A. No.

14 Q. Okay. The people left?

15 A. The guy was still there.

16 Q. Oh, Mr. Stevens was still there?

17 A. No. Steven, no.

18 Q. He stayed there until the -- almost the end,
19 even after the police came by, right?

20 A. He stayed there. Yeah.

21 Q. Yeah. And he was trying to fix things,
22 right?

23 A. When he came inside the first time, he asked
24 what's going on.

25 Q. Uh-huh.

1 A. Yeah.

2 Q. But at the end didn't he say, I'll try and
3 fix this?

4 A. And then, yes. He --

5 Q. Yeah. And I'll try and get you money back?

6 A. Not the money, the gun back.

7 Q. The gun back.

8 A. Yes.

9 Q. Okay. So someone else testified about the
10 money, but you didn't hear that?

11 A. No.

12 Q. All right. As I understand it, in this
13 store you sell mostly soda and chips and things like
14 that, and you make cheesesteaks and hamburgers and
15 cheeseburgers, right?

16 A. Yes.

17 Q. You don't have fresh fruits or vegetables,
18 right?

19 A. Yeah, I do.

20 Q. You do?

21 A. Uh-huh.

22 Q. Okay. Good. Now during the course of this
23 argument, did Mr. Stevens ever threaten to hurt you?

24 A. No.

25 Q. All right. Now there's a point at the tape

1 where we see you going like this with your hands up --

2 A. Yes.

3 Q. -- and it appears maybe you're taking a step
4 back?

5 A. Yes.

6 Q. Was -- what was the -- what were you trying
7 to say there or what did you say there?

8 A. I was like, calm down. There no need for
9 this. Calm down.

10 Q. Okay.

11 A. Yeah.

12 Q. So it wasn't, I surrender, don't hurt me.
13 It was --

14 A. No. No. Keep my head up and let him know I
15 ain't going to do nothing or try nothing. Calm down.

16 Q. Okay. You were telling him, and correct me
17 if I'm wrong, that you're trying to deescalate the
18 argument?

19 A. Uh-huh. Yes.

20 Q. You know what I say when I say deescalate?

21 A. Yeah. I understand.

22 Q. You're trying to calm things down.

23 A. Yes.

24 Q. And you're telling him to calm down?

25 A. Yes.

1 Q. All right. It's not that there's a threat
2 of physical violence by anyone at that point, is
3 there?

4 A. No.

5 Q. All right. And is that one of the reasons
6 why you didn't call 911 because there wasn't a threat
7 of physical violence?

8 A. No. I didn't -- my phone was in the
9 kitchen.

10 Q. Okay.

11 A. I got to go in the back of the store to get
12 my phone.

13 Q. All right. When Ezaliza came in the store,
14 did you tell her what was going on or did she already
15 know as far as you could tell?

16 A. I think she already know.

17 Q. Okay.

18 A. Yes.

19 Q. Now from beginning to end, from when Mr.
20 Quinn first approaches Joel to ask for his money back
21 until Mr. Stevens leaves, how much time went by?

22 A. Like 30 seconds.

23 Q. No. The whole incident, did it last ten
24 minutes, 20 minutes, 15 minutes?

25 A. Oh, the whole incident? Oh, probably like

1 ten minute probably. Yeah.

2 Q. Okay. Now you heard the sirens, the police
3 sirens go by, correct?

4 A. When it's coming, yeah.

5 Q. Yeah. Mr. Stevens is still in the store at
6 that point?

7 A. Yes.

8 Q. In fact, at that point he's leaning against
9 the ice cream case, isn't he?

10 A. Yes, he is.

11 Q. Did he react to the police sirens in any
12 way?

13 A. No.

14 Q. In fact, he continued to talk --

15 A. Yeah.

16 Q. -- to you and Joel and Ezaliza, didn't he?

17 A. Yeah. He -- yes. He was talking to Joel.

18 Q. And what was he saying at that point?

19 A. He was telling Joel, I'm going to get your
20 gun back. I'm going to get it back.

21 Q. Okay. He was still trying to resolve the
22 problem?

23 A. Yeah. Uh-huh.

24 Q. You have to say yes or no.

25 A. Yes.

1 Q. Okay. Now did you see him leave the store?

2 A. Yeah.

3 Q. Yes?

4 A. Yes.

5 Q. Can you describe to the jury how he left?

6 Did he run out? Did he walk fast? Did he walk
7 normal?

8 A. No. He walked normal as he got out of the
9 store. He left.

10 Q. Okay. Like there wasn't a problem anymore?

11 A. Yes.

12 Q. Did you see where he went?

13 A. No.

14 Q. Okay. Now have you had arguments with
15 people?

16 A. No.

17 Q. You don't argue?

18 A. No.

19 Q. Okay. Have you witnessed arguments between
20 people?

21 A. Yes.

22 Q. When they get heated do people say things
23 that you clear -- they clearly don't mean?

24 A. Everybody do, but they -- somebody angry,
25 somebody -- you say something you don't want to say

1 right in the moment.

2 Q. Yeah. And they can -- it can be a really
3 angry, threatening kind of statement, but you don't
4 necessarily mean it?

5 A. Right. Yeah.

6 Q. Like I'll get you for this?

7 A. Yeah.

8 Q. Yeah. Or we'll settle this later, that kind
9 of thing?

10 A. Yeah.

11 Q. So when you heard Mr. Stevens say, I'll
12 close this, I'll shut it down --

13 A. Uh-huh.

14 Q. -- did you take him seriously or did you
15 think this is something said in anger or you don't
16 know?

17 A. I don't know, but he can't do it. He -- I
18 -- he say I close the store down. I close this shit
19 down.

20 Q. How could he do that, right?

21 A. How? Who you?

22 Q. Right. Who are you to have that kind of
23 power to shut this store down --

24 A. Yeah.

25 Q. -- right?

1 A. Uh-huh.

2 Q. So it's like --

3 THE COURT: You have to answer yes or
4 no.

5 THE WITNESS: Yes.

6 BY MR. WITTELS:

7 Q. So it's like, you know, something said in
8 anger, right?

9 A. Yes.

10 Q. All right. Thanks.

11 MR. WITTELS: I got nothing else.

12 THE WITNESS: Thank you.

13 MS. MEEHAN: No questions, Your Honor.

14 THE COURT: Thank you.

15 Mr. Eckert, any -- or Ms. Martin, any
16 --

17 MS. MARTIN: Redirect.

18 THE COURT: -- redirect?

19 MS. MARTIN: Thank you, Your Honor.

20 Briefly. If I could just have a moment.

21 (Pause)

22 REDIRECT EXAMINATION

23 BY MS. MARTIN:

24 Q. Good morning, Mr. Sanchez.

25 A. Good morning.

1 Q. I want to follow up immediately on what Mr.
2 Wittels was just asking you about.

3 A. Yes.

4 Q. He was asking you whether or not you took
5 Mr. Stevens' threat seriously at the end to shut the
6 store down. Do you remember that question?

7 A. Yes,

8 Q. And you had only worked at the store for
9 three days --

10 A. Three days.

11 Q. -- at that point?

12 A. Yes.

13 Q. Okay. Did you know Mr. Stevens at all?

14 A. No.

15 Q. Had you ever seen him before?

16 A. No.

17 Q. All right. He also asked you whether or not
18 Mr. Stevens ever threatened to hurt you. Do you
19 remember that question?

20 A. Yes.

21 Q. He was talking about that moment where your
22 hands are up in the air?

23 A. Yes.

24 Q. If I could please have the witness shown
25 what's been previously marked and admitted as C-125.

1 THE COURT: Pardon me. What?

2 MS. MARTIN: 1-C-25, I apologize.

3 THE COURT: What is the -- again, the
4 number?

5 MS. MARTIN: 1-C-25. And if it could
6 be published.

7 THE COURT: It may be, Michael.

8 MS. MARTIN: Thank you.

9 BY MS. MARTIN:

10 Q. Mr. Sanchez --

11 THE COURT: Michael --

12 (Pause)

13 THE COURT: Go ahead. You may proceed.

14 MS. MARTIN: Thank you.

15 BY MS. MARTIN:

16 Q. Mr. Sanchez, Mr. Wittels just asked you
17 whether or not Mr. Stevens ever threatened you with
18 words; is that right?

19 A. Yes.

20 MR. WITTELS: Objection. That
21 mischaracterizes the question and the answer, Judge.
22 I did not ask -- say with words. I asked did he ever
23 threaten you.

24 MS. MARTIN: I'll rephrase, Your Honor.

25 THE COURT: All right.

1 BY MS. MARTIN:

2 Q. Mr. Sanchez, he asked whether or not he had
3 ever threatened you; is that right?

4 A. Yes.

5 Q. Okay. In this moment, in 1-C-25, do you see
6 the gun in Mr. Stevens' hand?

7 A. Yes. I know he got it in his hand.

8 Q. Did you know it was there in that moment?

9 A. Yes.

10 Q. And did you think it was real?

11 A. Yes.

12 MS. MARTIN: And can I see 1-C-26,
13 please?

14 (Pause)

15 BY MS. MARTIN:

16 Q. Is the gun still in his hand in this
17 picture, Mr. Sanchez?

18 A. Yes. All the time it was in his hand.

19 Q. And your hands are up like this?

20 A. Yes. I -- yes.

21 Q. Are you scared? Are you concerned in that
22 moment?

23 A. Well, yeah, I'm scared. He got a gun in his
24 hand. That's why my hands is up.

25 Q. Now I want to go back to yesterday.

1 MS. MARTIN: You can take that down,
2 please. Thank you.

3 If you could please turn to
4 Government's Exhibit 1-A, the video at 16:58:29 and if
5 you could just show it to the witness.

6 BY MS. MARTIN:

7 Q. Mr. Sanchez, do you remember yesterday when
8 Mr. Patterson, the attorney sitting right here, do you
9 remember when he was asking you questions about Mr.
10 Smith, the man in all black?

11 A. Yes.

12 Q. Do you remember when he was asking you about
13 what he was doing by the door?

14 A. Yes.

15 Q. Okay. And whether or not you had ever seen
16 a gun ever again --

17 A. Yes.

18 Q. -- from him? He was asking you, and I
19 believe the motion was he was standing there with both
20 of his hands in his pockets?

21 A. Yes.

22 Q. Those hands stayed in his pockets, right?

23 A. Yes.

24 Q. Did you know that there was a gun in each of
25 those pockets in that moment?

1 A. No.

2 Q. And in this moment now that's on the screen,
3 is he standing between you and the exit to the store?

4 A. Yes.

5 MS. MARTIN: I have nothing further,
6 Your Honor.

7 THE COURT: Is there any further --

8 MR. PATTERSON: One question.

9 THE COURT: -- cross-examination?

10 MR. PATTERSON: Can you put that
11 picture back up if you may?

12 THE COURT: Let me finish. Any further
13 cross-examination?

14 MR. PATTERSON: There is, Judge. I'm
15 sorry.

16 THE COURT: All right. You may
17 proceed, Mr. Patterson.

18 RECROSS-EXAMINATION

19 BY MR. PATTERSON:

20 Q. Mr. Sanchez, you remember me?

21 A. Yes.

22 Q. Okay. Let's just look at that photo again
23 and the very last question before the Government sat
24 down. You identified my client, Donnie Smith, who is
25 standing between you and the doorway; is that correct?

1 A. Yes.

2 Q. He never stopped you from leaving, did he?

3 A. No.

4 Q. Okay. Thank you.

5 THE COURT: Any further --

6 MR. WITTELS: If I may? Two questions,
7 maybe three.

8 RECROSS-EXAMINATION

9 BY MR. WITTELS:

10 Q. During the course of this argument did Mr.
11 Stevens ever threaten you?

12 A. No.

13 Q. During this (sic) course of this argument
14 were you ever physically afraid for your own safety or
15 well being?

16 A. Yes.

17 Q. Well, when was that?

18 A. Well, he got a hand on his gun.

19 Q. Yeah.

20 A. He got a gun in his hand.

21 Q. And that --

22 A. And so that means to stay back.

23 Q. And --

24 A. Anything can happen.

25 Q. That's right. Anything can happen.

1 A. Right.

2 Q. When anybody has a gun, whether it's Joel or

3 --

4 A. Anybody.

5 Q. -- or anybody?

6 A. Yes.

7 THE COURT: Let him answer -- ask the
8 question, then you answer.

9 THE WITNESS: Okay.

10 MR. WITTELS: Okay.

11 BY MR. WITTELS:

12 Q. Whether it's Joel or anybody else, right?

13 A. Yes.

14 Q. So that's why you're saying calm down?

15 A. Yes.

16 Q. Because you don't want this argument to get
17 out of hand?

18 A. Yes.

19 Q. Because you know, based on your life
20 experience, that when people have guns and arguments
21 get out of hand, bad things can happen?

22 A. Yes.

23 Q. And you didn't want that for anybody?

24 A. Anybody.

25 Q. Not for yourself and not for your baby momma

1 and not for your friend, Joel?

2 A. Nobody.

3 Q. Right. Thank you.

4 A. You're welcome.

5 THE COURT: There's no redirect, is
6 there?

7 MS. MARTIN: No, Your Honor.

8 THE COURT: Fine. Mr. Sanchez, that
9 concludes your testimony.

10 THE WITNESS: Thank you.

11 THE COURT: You may step down.

12 (Pause)

13 THE COURT: Thank you, Ms. Weaver.

14 THE INTERPRETER: Thank you, Your
15 Honor.

16 MR. ECKERT: Your Honor, may we have
17 one moment to talk? Court's indulgence for one
18 second.

19 THE COURT: Yes.

20 (Pause)

21 MS. MARTIN: Your Honor, the Government
22 would call Officer Ferreira to the stand.

23 THE CLERK: Raise your right hand.

24 OFFICER DAVID FERREIRA, GOVERNMENT'S WITNESS, SWORN

25 THE CLERK: Thank you. Please be

1 seated.

2 Please state your full name for the
3 record.

4 THE WITNESS: Good morning. I'm
5 Officer David Ferreira.

6 THE COURT: Good morning, Officer.

7 THE WITNESS: Good morning, sir.

8 MS. MARTIN: May I, Your Honor?

9 THE COURT: You may.

10 MS. MARTIN: Thank you.

11 DIRECT EXAMINATION

12 BY MS. MARTIN:

13 Q. Good morning, Officer.

14 A. Good morning, ma'am.

15 Q. Officer Ferreira, how are you currently
16 employed?

17 A. I'm employed by the Philadelphia Police
18 Department.

19 Q. And what district do you work in?

20 A. I work in the 14th District.

21 Q. And where is that?

22 A. That's in the northwest section of the city.

23 Q. All right. And how long have you been doing
24 that?

25 A. For about two years now.

1 Q. And as of March 22nd, 2019, how long had you
2 been on the job?

3 A. About one year.

4 Q. Were you working on March 22nd, 2019/

5 A. Yes, ma'am.

6 Q. What were your work hours that day?

7 A. I was working the afternoon shift.

8 Q. What does that mean?

9 A. It's --

10 Q. What time?

11 A. Four -- 4 p.m. to 12 a.m.

12 Q. Were you working alone or with a partner?

13 A. I was working alone.

14 Q. Do you remember what your assignment was
15 that day?

16 A. I was on patrol.

17 Q. Just routine patrol in the 14th District?

18 A. Correct.

19 Q. Did you receive a radio call at some point
20 regarding an incident at 152 East Sharpnack Street?

21 A. Yes, I did.

22 Q. Do you remember what the radio call was for?

23 A. Originally it was for a theft in progress.

24 Q. Do you happen to remember what time that
25 radio call came in or about what time that call came

1 in?

2 A. Sometime after my report (indiscernible).

3 Q. Okay. Did you respond to the call?

4 A. Yes, I did.

5 Q. Do you remember how far away you were when
6 you started responding to the call?

7 A. I couldn't have been farther than two
8 minutes away.

9 Q. All right. And did you go lights and
10 sirens?

11 A. Yes, I did.

12 Q. You were in a marked patrol car?

13 A. Yes, I was.

14 Q. And at some point on your way to the scene
15 did you receive additional information about the radio
16 call that came in?

17 A. Yes, ma'am.

18 Q. What happened?

19 A. The theft in progress got upgraded to a
20 robbery --

21 MR. WITTELS: Your Honor --

22 THE WITNESS: -- in progress.

23 MR. PATTERSON: Your Honor, if I may
24 object that if this testimony is offered for the proof
25 of the matter asserted, it's hearsay. If it's just

1 for why the officer responded, then I'm okay with
2 that.

3 MS. MARTIN: Your Honor, it's for why
4 the officer responded and the number of officers that
5 responded.

6 THE COURT: And that means this is
7 really testimony offered, or this part of the
8 testimony, only offered to show the officer's state of
9 mind, what he was thinking and why he did what he did,
10 not to establish the truth of what was said, only that
11 it was said.

12 MS. MARTIN: May I proceed, Your Honor?

13 THE COURT: You may.

14 MS. MARTIN: Thank you.

15 BY MS. MARTIN:

16 Q. It just means that the priority of the call
17 was upgraded; is that right?

18 A. That's correct.

19 Q. What -- why does that matter?

20 A. It matters in the amount of officers that's
21 going to respond to the call and the intensity.

22 Q. Okay. Do you remember which way you
23 approached the location, from which direction?

24 A. I was coming off Germantown Avenue. I came
25 the wrong way on Sharpnack going eastbound.

1 Q. Okay.

2 MS. MARTIN: If I could please have the
3 witness shown what has been marked and admitted as
4 Government's Exhibit 3-A. And if it could be
5 published to the jury.

6 THE COURT: It may.

7 BY MS. MARTIN:

8 Q. Officer Ferreira, do you recognize the map
9 that's in front of you?

10 A. Yes, I do.

11 Q. Do you recognize the location?

12 A. Yes, I do.

13 Q. Okay. And does this depict where 152 East
14 Sharpnack Street is located?

15 A. It's right at the corner of Sharpnack Street
16 and Ross Street.

17 Q. Okay. And if I move over to this screen
18 over here, can you see me?

19 A. Yes, I can.

20 Q. And in terms of explaining to the jury which
21 way you ultimately approached, can you tell me where
22 Sharpnack Street is in relation to Ross and which way
23 you drove your car?

24 A. It's -- I would have to point over here.

25 Q. Okay. Go ahead.

1 THE COURT: That's going to be rather
2 difficult for the jury to see.

3 THE WITNESS: Oh.

4 MS. MARTIN: Your Honor, I --

5 THE COURT: I suggest that you use this
6 screen. We can move the screen as we did before.

7 MS. MARTIN: I just didn't want to
8 invade the (indiscernible) of the jury. If it's
9 alright with Your Honor that I approach?

10 THE COURT: It is.

11 THE WITNESS: Oh.

12 THE COURT: I'm told that you can use
13 your finger to draw on the monitor.

14 THE WITNESS: Fair enough.

15 MS. MARTIN: You want to try that,
16 Officer Ferreira?

17 BY MS. MARTIN:

18 Q. Okay. For the record, you're drawing --

19 THE COURT: The -- all right. The
20 screens are up.

21 MS. MARTIN: Okay.

22 BY MS. MARTIN:

23 Q. Officer Ferreira, can you try again? Can
24 you draw a line of which way you approached the store?

25 All right. Drawing a line and a -- which

1 way does Sharpnack go?

2 A. It goes west.

3 Q. It goes west? So you were --

4 A. Westbound.

5 Q. So you were drawing a line eastbound --

6 A. Yeah. I was going eastbound.

7 Q. -- towards the top of the screen. And,

8 Officer Ferreira, can you tell us on this map where is
9 the store located?

10 A. Right.

11 Q. Can you circle it? Okay. Indicating for
12 the record the circle drawn on the corner of Sharpnack
13 --

14 A. Sharpnack --

15 Q. -- and Ross?

16 A. Correct.

17 Q. All right. So you drove the wrong way up a
18 one-way street; is that fair?

19 A. Correct.

20 Q. And did you park your car in a normal legal
21 parking space?

22 A. No, I did not.

23 Q. What did you do?

24 A. I parked right in the middle of the street.

25 Q. Again, you were going lights and sirens on

1 the way there?

2 A. Correct.

3 Q. At some point did you ever turn off your
4 sirens as you were approaching?

5 A. I believe so.

6 Q. Why do you do that?

7 A. So we don't alert the suspects.

8 Q. Did you have information at the time that
9 there may be suspects still on scene? Only if --

10 A. I'm not positive.

11 Q. -- you remember. Okay.

12 So you parked your car in the middle of the
13 street?

14 A. Correct.

15 Q. What do you do next?

16 A. Get out of my patrol car and then go towards
17 the store.

18 Q. So you're walking towards the store. Do you
19 go in the store?

20 A. I do not.

21 Q. Why not?

22 A. Because I received further information from
23 radio dispatcher.

24 Q. How do you receive that information once
25 you're out of your patrol car?

1 A. Through my radio.

2 Q. And you just indicated for the record a
3 motion on your right-hand shoulder. Is that where
4 your radio sits?

5 A. Correct.

6 Q. Okay. What information did you receive over
7 the radio?

8 A. That one male was -- one of the suspects was
9 possibly still on location. They had fled the store
10 and got into a parked vehicle.

11 Q. Do you know where that information is coming
12 from over the radio? Do you know who -- what -- the
13 call sign of the entity that was giving the
14 information?

15 A. I do.

16 Q. And what was it?

17 A. From Real Time Crime Center.

18 Q. And what -- what's the Real Time Crime
19 Center?

20 A. Real Time Crime Center is the center where
21 they control all the live cameras that are spread
22 throughout the city.

23 Q. And do you know whether or not there is a
24 live camera that covers the location or area that you
25 were in?

1 A. I do. There is one.

2 Q. Okay. And have you seen footage from that
3 pole camera of the incident we're talking about right
4 now?

5 A. I did saw -- I saw it last week.

6 Q. Okay. So you received the information that
7 a suspect is still on location. Did you receive any
8 details about where that suspect may have been?

9 A. It was -- the information I received was the
10 vehicle was parked a little bit farther up the block.

11 Q. Did you get a description of the vehicle?

12 A. A dark, dark sedan.

13 Q. All right. And did you see any vehicles in
14 the area that matched that description?

15 A. Yes, I did.

16 Q. What did you do?

17 A. I approached the vehicle from the passenger
18 side.

19 Q. All right. So if you could explain this for
20 us. Is the car that you're approaching, do you see
21 the rear of the car as you're approaching or do you
22 see the front of the car as you're approaching?

23 A. I see the rear of the vehicle.

24 Q. All right. And you said you approached on
25 the passenger side?

1 A. Correct.

2 Q. Could you see inside the car?

3 A. I could not.

4 Q. What did you do next?

5 A. I went around to take a look from -- through
6 the windshield and that's where I saw the other
7 vehicle was occupied by someone.

8 Q. At that point when you're standing by the
9 passenger side looking through the windshield, do you
10 remember whether or not the ignition of the car was
11 running at that time?

12 A. I do not remember.

13 Q. So what did you see inside the windshield?

14 A. I could observe there was someone in the
15 vehicle. I couldn't really see with great details.

16 Q. All right. What did you do next?

17 A. Sometime between going around, that's where
18 I drew my weapon.

19 Q. Why did you draw your weapon?

20 A. Because it was -- based on the radio call it
21 was a robbery, so it -- the male inside could have
22 been armed.

23 Q. Did you have information specifically that
24 it was an armed robbery?

25 A. I believe so.

1 Q. Did you give the person inside the car any
2 verbal commands, if you remember?

3 A. I do not remember.

4 Q. Did the person roll down the window?

5 A. No, he did not.

6 Q. Did the person get out of the car?

7 A. No.

8 Q. What did you do next?

9 A. That's when I went around to the driver's
10 side and I pulled the door open.

11 Q. Did you see anyone inside?

12 A. Yeah, I saw.

13 Q. Do you remember anything about a description
14 of the individual?

15 A. Only the -- he was dressed with dark colors
16 and he had a hat.

17 Q. Okay. Did he say anything to you?

18 A. I don't remember.

19 Q. Did you give him any commands at that point
20 to exit the vehicle?

21 A. No, I did not.

22 Q. What happens --

23 A. I don't remember.

24 Q. Okay. What happens next?

25 A. I tried to remove the male from the vehicle.

1 Q. How did you do that?

2 A. By pulling, pulling him.

3 Q. All right. You just did a motion for the
4 record with both of your hands. What were you pulling
5 on?

6 A. I don't remember.

7 Q. Fair to say this all happened pretty fast?

8 A. Yeah. Yeah, it happened really fast.

9 Q. Do you remember at any point during this
10 interaction the car turning on?

11 A. I remember hearing it. I don't know. It
12 was sometime between -- I don't know if it was before
13 I opened the door or afterwards.

14 Q. But at some point when you're near the
15 vehicle you heard the ignition turn over?

16 A. Yes, I did.

17 Q. Did you ever try to get the keys out of the
18 ignition?

19 A. I don't remember.

20 Q. Were you able to successfully pull the
21 individual from the car?

22 A. No, I was not.

23 Q. What happens next?

24 A. Before I tried removing the -- that's when I
25 holstered my weapon. I see that -- I didn't see a

1 weapon inside the car, so I didn't point at -- drew my
2 weapon. And then he tried to take -- he started to
3 take away. I believe I walked a few feet and then I
4 let it go.

5 Q. All right. Was the male able to take off?

6 A. Yes, he was.

7 Q. Were there any other police on scene at that
8 point, any --

9 A. Yes.

10 Q. -- other police cars?

11 A. Yes. There was a police vehicle
12 approaching.

13 Q. All right. And did they follow that
14 vehicle?

15 A. Yes. They started to chase it.

16 Q. Okay.

17 MS. MARTIN: If I could, please, have
18 the witness shown and only the witness what's been
19 marked as -- I will be marking as Exhibit 2-B, which
20 is Clip Number 1.

21 THE COURT: G-2-B?

22 MS. MARTIN: Yes, Your Honor.

23 (Pause)

24 BY MS. MARTIN:

25 Q. While he's doing that, Officer, I want to

1 talk to you about the pole camera footage. You said
2 you viewed it?

3 A. Yes, I did.

4 Q. Can you just explain to the ladies and
5 gentlemen of the jury which way the pole camera faces?

6 A. It faces pretty much the store and then this
7 section of Sharpnack and Ross.

8 Q. So does the camera look down the way that
9 you came up the street?

10 A. I'm not positive.

11 Q. Okay. We'll pull it up in just a second.

12 (Pause)

13 Q. We'll come back to that, Officer.

14 Okay. So the other officers arrive on
15 location and they follow the car; is that fair?

16 A. Yes, they did.

17 Q. Was that lights and sirens?

18 A. Correct.

19 Q. What do you do?

20 A. Then I go back to my patrol vehicle and I
21 started listening to the directions that the other
22 officers, the chasing officers were giving.,

23 Q. You said you go to your vehicle and listen.
24 You mean to police radio?

25 A. Correct.

1 Q. And did you try to follow?

2 A. I could not follow because I could not see
3 them anymore because I was parked the opposite way.

4 Q. Did you at some point determine the ultimate
5 location of the vehicle involved in the chase?

6 A. Yes, I did.

7 Q. How was that?

8 A. They gave the right directions where -- so I
9 was able to get to the direction -- to that location.

10 Q. And can you tell me the state of the car
11 when you saw it again?

12 A. When I saw it, it was already crashed into a
13 rock, something of that nature.

14 Q. Do you remember the address or the
15 approximate location of where the car crashed?

16 A. Yes. I wrote it down. 1021 West Holder,
17 the 2000 block of Holder, West --

18 Q. How --

19 A. -- Holder.

20 Q. Okay. How far away is that from 152 East
21 Sharpnack, just ballpark?

22 A. I would say ten, 11 blocks away.

23 Q. Did you respond to the location of the car
24 crash?

25 A. Yes, I did.

1 Q. And was there anyone on scene when you
2 arrived, any civilians on scene? Was there anyone in
3 the car?

4 A. Not in the car.

5 Q. Did you look in the car?

6 A. I did not.

7 Q. All right. Were there other officers on
8 scene?

9 A. Yes.

10 Q. Did you ever make any attempts to locate the
11 individual that was in the car, you or other officers?

12 A. The other officers did. I had to stay with
13 the vehicle, holding it for a warrant.

14 Q. Is that a wooded area?

15 A. Yes, it is.

16 Q. Were the other officers in the woods while
17 you were holding the car?

18 A. Correct.

19 Q. Were you ever able to locate the suspect or
20 individual that day?

21 A. No. I was not.

22 Q. If I could please have Exhibit 26-A and 26-D
23 shown to the witness?

24 A. Officer Ferreira, do you recognize what's
25 just been placed on your screen, Government's Exhibit

1 26-A?

2 A. Yes, I do.

3 Q. What is it?

4 A. It was the vehicle that fled from the scene.

5 Q. And where is that picture taken?

6 A. That's in the park.

7 Q. Is that a fair and accurate depiction of the
8 vehicle as you saw it that day?

9 A. Yes, it is.

10 Q. Okay.

11 MS. MARTIN: Your Honor, at this time I
12 would move to admit Exhibits 26-A through 26-D and
13 publish to the jury.

14 MR. PATTERSON: No objection.

15 THE COURT: G-26-A, B, C and D, four
16 photographs, are received in evidence.

17 (Government's Exhibit Nos. 26-A through 26-D are
18 received)

19 MS. MARTIN: And if I could publish for
20 the jury, please.

21 BY MS. MARTIN:

22 Q. Officer Ferreira, the picture on the screen
23 there, is that the same vehicle that you saw outside
24 of the store at 152 East Sharpnack?

25 A. Yes, it is.

1 Q. And is that in the same position that you
2 saw it at the scene of the crash?

3 A. Yes, it is.

4 Q. All right.

5 MS. MARTIN: If I can have the witness
6 shown 26-B.

7 BY MS. MARTIN:

8 Q. Again, another photograph of the car at that
9 scene?

10 A. Yes, ma'am.

11 Q. And 26-C, was that the positioning and
12 damage to the tire that you observed when you got
13 there?

14 A. Yes.

15 Q. And 26-D, Officer Ferreira, do you remember
16 seeing this license plate or I believe it's temporary
17 tag on this vehicle?

18 A. Yes.

19 Q. And that's a New Jersey temporary tag?

20 A. That's correct.

21 Q. Did you complete any paperwork related to
22 that car?

23 A. I did not.

24 Q. Why not?

25 A. Because I didn't put it on a property

1 receipt. Another officer did.

2 Q. What's a property receipt? I think that's
3 the first time the jury's heard that term.

4 A. Oh, every time you have a car that they
5 possibly want fingerprints from the vehicle or DNA
6 samples, they have to get a warrant. So we treat it
7 as a car for prints, and then they put -- a property
8 receipt is just a paper where it states the vehicle
9 information, the VIN number, tags, and all that.

10 Q. Did you leave the vehicle in the hands of
11 another officer that completed that paperwork?

12 A. Yes, I did.

13 Q. Was that the conclusion of your involvement
14 in this investigation or did you do anything else?

15 A. No. I received -- got a call from the
16 officer who went to the store to get the complainant.
17 He asked for another unit or a backup.

18 Q. Did you return to the 152 East Sharpnack to
19 provide backup to other officers who were on scene?

20 A. Yes, I did.

21 Q. And did you come into contact with a female
22 in an all-black outfit while you were there at the
23 scene?

24 A. Yes, I did.

25 Q. Did you have any interaction with that woman

1 or did you transport her?

2 A. I don't remember.

3 Q. Did you ever go to Northwest Detective
4 Division later that night to give a statement?

5 A. Yes, I did.

6 MS. MARTIN: Your Honor, if I could
7 just have one moment and see if we can get the
8 technology issue fixed.

9 THE COURT: Yes.

10 (Pause)

11 MS. MARTIN:

12 Q. Okay. Officer Ferreira, I have placed 2-B
13 -- Government's Exhibit 2-B on the screen in front of
14 you. Do you recognize what you're looking at?

15 A. Yes, I do.

16 Q. Okay. What is it?

17 A. That's the camera footage from the pole
18 camera.

19 Q. All right. And is it a fair and accurate
20 depiction of that location where the pole camera is
21 and what occurred that you've already described for
22 the jury?

23 A. Yes, it is.

24 MS. MARTIN: Your Honor, permission to
25 admit Government's Exhibit 2-B and publish to the

1 jury.

2 THE COURT: Any objection?

3 MR. PATTERSON: No, Your Honor.

4 THE COURT: G-2-B is received in
5 evidence.

6 (Government's Exhibit No. 2-B was received)

7 BY MS. MARTIN:

8 Q. All right. Before we play the video,
9 Officer Ferreira, can you orient the jury as to what
10 we're looking at? What street is that in the video?

11 A. That's Sharpnack Street.

12 Q. All right. And is the direction of travel
13 east or westbound on that street?

14 A. That's westbound.

15 Q. And you told the jury that you came or
16 approached eastbound; is that fair?

17 A. That's correct.

18 Q. All right. And where's the store in
19 location -- in relation to what we're seeing in this
20 video?

21 A. It's -- the camera is 360, so we wouldn't be
22 able to see it from this angle.

23 Q. Okay.

24 A. It would be behind the other way.

25 Q. So if, for example, in this video we see you

1 driving the wrong way up the street, were you driving
2 in the direction directly at the store?

3 A. Yes, I was.

4 Q. So it's essentially underneath this camera?

5 A. Correct.

6 Q. All right. And the vehicle in question that
7 you talk -- you told us about that you received
8 information over Real Time Crime, do you see that
9 vehicle in this still image before I play it for you?

10 A. Yes, I do.

11 Q. Okay. And can you go ahead and circle it
12 for the jury using your screen?

13 A. Yes.

14 Q. All right. Indicating for the record on the
15 initial still screen the second vehicle on the left-
16 hand side, parked on the left-hand side. All right.

17 If we could go ahead and play 2-B for the
18 witness. What's the time marked there, Officer
19 Ferreira?

20 A. 4:55 p.m.

21 Q. 4:55 and?

22 A. Eight, eight seconds, ten.

23 Q. Thank you.

24 (At 10:26 a.m., Exhibit 2-B played)

25 (At 10:27 a.m.)

1 MS. MARTIN: I apologize, Your Honor.
2 That's the -- can we please go to the second clip.
3 We'll mark it as 2-C.

4 THE COURT: What is on the screen now,
5 2-C?

6 MS. MARTIN: That was -- we'll mark
7 that as 2-B, Your Honor. That's the video starting at
8 4:55 p.m. I would like to show the witness what I'll
9 mark as 2-C which is the second video clip.

10 THE COURT: And moving that into
11 evidence?

12 MS. MARTIN: I am going to move that
13 into evidence as well, Your Honor.

14 THE COURT: Any objection?

15 MR. PATTERSON: No, Your Honor.

16 THE COURT: 2-C is received in
17 evidence.

18 (Government's Exhibit 2-C was received)

19 MS. MARTIN: Permission to publish,
20 Your Honor?

21 THE COURT: Yes, you have it.

22 BY MS. MARTIN:

23 Q. All right. Fair to say we're still looking
24 at that same camera angle, just five minutes later
25 than the video we just saw --

1 A. Yes, ma'am.

2 Q. Officer Ferreira? Okay. And we're still
3 looking at the same car on the left-hand side?

4 A. Yes, ma'am.

5 MS. MARTIN: And if you could go ahead
6 and play the video for the witness.

7 (At 10:28 a.m. video played)

8 (At 10:28 a.m.)

9 BY MS. MARTIN:

10 Q. What's the time at the bottom of the screen
11 right now?

12 A. 5:01:20 seconds.

13 Q. Is that your police car, Officer Ferreira?

14 A. Yes, it is.

15 (At 10:28, video resumes)

16 (At 10:29 a.m.)

17 MS. MARTIN: If you could pause,
18 please. Can you go back just a little bit?

19 BY MS. MARTIN:

20 Q. Officer Ferreira, just to be clear, the
21 marked police car, is that your car that we see on the
22 screen right now?

23 A. Yes, ma'am.

24 Q. Okay. And the time is 5:02 and 42 seconds.
25 And does this video demonstrate the events that

1 happened that day that you described for the jury?

2 A. Yes, it does.

3 MS. MARTIN: If I could just have a
4 moment with Counsel, Your Honor.

5 THE COURT: You may.

6 (Pause)

7 MS. MARTIN: Your Honor, I have nothing
8 further for this witness. Thank you.

9 THE COURT: Thank you.

10 Mr. Patterson.

11 CROSS-EXAMINATION

12 BY MR. PATTERSON:

13 Q. Good afternoon, Officer.

14 A. Good afternoon, sir.

15 Q. Officer, I'm sorry. You had told the jury
16 how long you've been a police officer. How long is
17 that?

18 A. Close to two years now.

19 Q. And you're a patrolman, correct?

20 A. Yes, sir.

21 Q. So obviously you have quite a bit of
22 experience working for the City of Philadelphia,
23 correct?

24 A. Yes, sir.

25 Q. You referenced a walkie talkie that you keep

1 on your right shoulder; is that correct?

2 A. Yeah. It's the radio.

3 Q. And that radio is directly connected to
4 dispatch, correct?

5 A. Correct.

6 Q. So when you're in a patrol car on your daily
7 patrol, you have a certain patrol area, correct?

8 A. Yes, sir.

9 Q. And so when you're in your car, when you're
10 on foot, or you're anywhere throughout the day when
11 you're on duty you can listen to that -- the speaker
12 on your right shoulder and you're listening directly
13 to dispatch, correct?

14 A. Yes, sir.

15 Q. Now you testified on questions from direct
16 examination that you were receiving a lot of
17 dispatches before you responded to Sharpnack Street;
18 is that correct?

19 A. That's correct.

20 Q. And when you receive a dispatch, just so
21 we're clear and the jury is clear, the dispatch is
22 from the dispatch center, right?

23 A. Correct.

24 Q. Okay. It's not from the person who's making
25 the phone call?

1 A. No, it's not.

2 Q. Okay. So when you started answering
3 questions based upon what you heard on your radio from
4 dispatch and His Honor instructed the jury that it's
5 not offered for the truth, but just for what you did.
6 So when you receive a dispatch, they try to give you
7 as much information as possible so you are prepared to
8 go and handle whatever they're telling you, correct?

9 A. Correct.

10 Q. Because if it's a cat in a tree as opposed
11 to a, you know, a theft or something, you're going to
12 be geared up for whatever you're responding to,
13 correct?

14 A. Correct.

15 Q. And that's what's in dispatch. But dispatch
16 is only relaying to you what they hear from somebody
17 else, right?

18 A. Yes.

19 Q. Okay. Now the -- I believe you said that
20 the dispatch initially was the actors may have been
21 armed; is that -- I forgot. What did you say was --

22 A. That's -- that's not what I said. I said
23 originally it came out as a theft in progress.

24 Q. Oh, just a theft in progress.

25 A. Correct.

1 Q. Okay. But you said when you responded that
2 you got out of the car and you did unholster your
3 weapon; is that correct?

4 A. No. That's not what I did.

5 Q. I'm sorry.

6 A. That's not what I said.

7 Q. And, again, if I'm -- please tell us again.

8 A. I said when I got out of the vehicle, I got
9 further information from radio dispatcher that it was
10 a -- could have been a robbery in progress with a gun.

11 Q. Okay. So then you got an additional
12 dispatch that there might be a gun. That's why you
13 unholstered your weapon; is that correct?

14 A. No. I don't remember drawing my weapon at
15 that time.

16 Q. Well, did you draw your weapon at one point?

17 A. Yes, I did.

18 Q. Okay. And, actually, you wrote in a police
19 report -- and by the way, you were trained as a police
20 officer for the City of Philadelphia Police Department
21 that whenever you're involved in any type of incident
22 you issue a police report, correct? You type a police
23 report?

24 A. That's not necessarily true.

25 Q. Sometimes you do?

1 A. No. Sometimes we don't have to.

2 Q. Okay. But in this case you did, correct?

3 A. No, I did not.

4 Q. Just to recount on my cross, you had your
5 weapon drawn, but then you specifically noticed that
6 the occupant of this car didn't have a gun and based
7 upon your observation of the occupant not having a gun
8 you put your gun away; is that correct?

9 A. That's correct.

10 Q. Okay. You would not have put your gun away
11 if you had any indication from this individual that he
12 had a gun or was reaching for a gun, correct?

13 A. Correct.

14 Q. Thank you.

15 MR. PATTERSON: Nothing further.

16 THE COURT: Any other cross-
17 examination?

18 MR. WITTELS: Just briefly.

19 CROSS-EXAMINATION

20 BY MR. WITTELS:

21 Q. Good morning, Officer Ferreira.

22 A. Good morning, sir.

23 Q. I represent Abid Stevens. You didn't have
24 any contact with him that day, did you?

25 A. No, I did not.

1 Q. Okay. When you got to the scene you cut
2 your lights and sirens because you were exiting your
3 radio patrol car, correct?

4 A. Correct.

5 Q. Okay.

6 A. And, also, I didn't want to alert anyone.

7 Q. But your brother and sister officers also
8 were driving radio patrol cars that came past the
9 scene with their lights and sirens still on, correct?

10 A. Yes, because at that time they were chasing
11 the vehicle.

12 Q. All right. So I would assume that people in
13 the store would still hear lights and sirens, correct?

14 A. I'm not sure.

15 Q. But the lights and sirens were on on other
16 vehicles as they went past the scene, correct?

17 A. I'm not sure.

18 Q. Okay. But you cut your lights and sirens
19 when you got to the scene?

20 A. Sometime --

21 Q. Or you don't remember --

22 THE COURT: No.

23 THE WITNESS: I don't remember.

24 THE COURT: Let him finish.

25 MR. WITTELS: Oh, I'm sorry.

1 THE COURT: You started to say
2 sometime.

3 THE WITNESS: Yes. Sometime between
4 turning into Sharpnack Street and getting to the
5 location that I did.

6 MR. WITTELS: All right.

7 BY MR. WITTELS:

8 Q. But if a witness has said that they heard
9 lights and sirens going by, they wouldn't be
10 incorrect, would they?

11 A. They wouldn't.

12 Q. What is -- is there a grading or a call for
13 argument in progress?

14 A. A rating?

15 Q. Yeah. Is there -- you told us about theft
16 in progress, robbery in progress. Is there one for
17 argument in progress?

18 A. There are many.

19 Q. Okay. But not for that? It would be more
20 likely a disturbance in progress, something like that?

21 A. That's correct.

22 Q. Yeah. Do you know who upgraded the call?

23 A. I would say it was the dispatcher.

24 Q. Okay. And you don't know on the basis of
25 what information it got upgraded, do you?

1 A. No, I don't.

2 Q. Thank you.

3 MS. MEEHAN: No questions.

4 MS. MARTIN: I have no redirect, Your
5 Honor.

6 THE COURT: Thank you very much,
7 Officer Ferreira. That --

8 THE WITNESS: Thank you, sir.

9 THE COURT: -- concludes your
10 testimony.

11 MS. MARTIN: Your Honor, the Government
12 calls Officer Raheem Williams.

13 (Pause)

14 MS. MARTIN: My apologies, Your Honor.
15 Officer, if you would please take the
16 stand.

17 THE CLERK: Raise your right hand.

18 OFC. RAHEEM WILLIAMS, GOVERNMENT WITNESS, SWORN

19 THE CLERK: Thank you. Please be
20 seated.

21 Please state your full name for the
22 record.

23 THE WITNESS: Raheem Williams.

24 Good morning, Your Honor.

25 THE COURT: Good morning.

1 MS. MARTIN: May I, Your Honor?

2 THE COURT: You may.

3 DIRECT EXAMINATION

4 BY MS. MARTIN:

5 Q. Good morning, Officer Williams.

6 A. Good morning.

7 Q. Officer Williams, how are you currently
8 employed?

9 A. 14th District Police Officer.

10 Q. A Philadelphia Police Officer?

11 A. Yes.

12 Q. And how long have you been a police officer?

13 A. Two years now.

14 Q. How long have you been assigned to the 14th
15 District?

16 A. Both years.

17 Q. And were you working as a Philadelphia
18 Police Officer on March 15th, 2019?

19 A. Yes, I was.

20 Q. And what was your schedule on that day,
21 March 15th?

22 A. Four to 12.

23 Q. Were you working alone or with a partner?

24 A. With a partner.

25 Q. Who was that?

1 A. Officer Rodriguez.

2 Q. And at some point -- well, let me back up.
3 Do you remember your schedule that day?

4 A. Yes. I was four to 12 that day.

5 Q. Four to 12. I apologize if you mentioned
6 that.

7 MR. PATTERSON: Your Honor, I'm going
8 to object to relevance on this line of questioning.

9 MS. MARTIN: Your Honor, I'm happy to
10 make a proffer at sidebar.

11 MR. PATTERSON: I would request that
12 also.

13 THE COURT: Yes. What?

14 MR. PATTERSON: I said I would request
15 that also.

16 THE COURT: Fine. We'll go to sidebar.

17 (At sidebar)

18 MS. MARTIN: (Indiscernible).

19 MR. PATTERSON: (Indiscernible).

20 MS. MARTIN: I was only going to say it
21 was a simple (indiscernible).

22 MR. PATTERSON: If you can say -- if --

23 MS. MARTIN: I specifically told him
24 (indiscernible). I apologize, Your Honor. I'm not
25 trying to not speak to you. I'm trying to explain to

1 counsel, I'm --

2 THE COURT: Well, I think we would
3 start with an offer of proof.

4 MS. MARTIN: Yes. This is an officer
5 that conducted a car stop of Donnie Smith's vehicle
6 nine -- 12 days before the robbery. It matches the
7 make, model, tag, VIN number. And he pulled his
8 identification and filled out a piece of paper that
9 says it was Donnie Smith in that vehicle that day. So
10 it establishes it's Donnie Smith's car. It goes to
11 the 911 call. It goes to the car chase
12 (indiscernible).

13 MR. PATTERSON: I'm okay with that.
14 I'm just was concerned about the officer testifying as
15 to the reason for the stop and putting an inference in
16 the jury's mind that my client was up to no good on a
17 prior occasion that has nothing to do with this case.

18 MS. MARTIN: And I explained to Mr.
19 Patterson just now and I apologize for not doing it
20 earlier.

21 THE COURT: I understand.

22 MS. MARTIN: I was simply going to ask,
23 did you conduct a routine traffic stop of this
24 individual.

25 MR. PATTERSON: And then I would just

1 ask that (indiscernible) --

2 MS. MARTIN: (Indiscernible).

3 THE COURT: I'm fine with that then.

4 MS. MARTIN: Is that okay?

5 THE COURT: That's fine. You'll
6 proceed as agreed.

7 (Sidebar concluded)

8 THE COURT: Counsel will proceed as
9 agreed at sidebar.

10 MS. MARTIN: Thank you, Your Honor.

11 BY MS. MARTIN:

12 Q. You said you were working 4 p.m. to 12 a.m.?

13 A. Yes, I was.

14 Q. And did you and your partner conduct a
15 routine traffic stop for a 2010 maroon Ford Taurus
16 that evening?

17 A. Yes, we did.

18 Q. Did you fill out any paperwork related to
19 that traffic stop?

20 A. Yes. I filled out the 48A.

21 Q. What's a 48A?

22 A. Just a report of a car stop that you would
23 pull over -- that you would conduct.

24 Q. Okay. And do you remember the individual's
25 name who was driving that 2010 Ford maroon Taurus?

1 A. Yes, I do.

2 Q. What was the name of the individual?

3 A. Donnie Smith.

4 Q. All right. And what was the VIN number of
5 the vehicle, if you remember it.

6 A. I don't remember it off the top of my head.

7 Q. All right. Would it refresh your
8 recollection if I showed you the paperwork you filled
9 out that evening?

10 A. Yes.

11 Q. If I could have on the witness's screen only
12 what's been marked as Government's Exhibit 6.

13 (Pause)

14 Q. Officer Williams, I've placed the 48A that
15 you filled out on the screen. Does that document
16 contain the VIN number?

17 A. Yes, it does.

18 Q. All right. And would you have written that
19 down that evening?

20 A. Yes.

21 Q. How did you obtain the VIN number?

22 A. From the vehicle itself.

23 Q. Okay. And can you read the VIN number into
24 the record, please?

25 A. Yes. It's going to be 1FAHP2EW9EG170167.

1 Q. Okay. And did you note the make, the model
2 and the year of the vehicle?

3 A. Yes, I did.

4 Q. What is it?

5 A. It's going to be a 2010 Ford Taurus sedan,
6 maroon -- well, red in color, but same shade of red.

7 Q. Okay. And did you take down any of the tag
8 or license plate information or do you remember
9 anything about the tag or license plate information?

10 A. On that night there was a temp tag on the
11 car itself.

12 Q. What's a temp tag?

13 A. It's not a real tag, but it's a tag to
14 transport a car from one state to another when you
15 first buy it.

16 Q. Okay. There were no traffic citations or
17 anything written as a result of that car stop,
18 correct?

19 A. No.

20 MS. MARTIN: I have nothing further for
21 this witness.

22 MR. PATTERSON: Very briefly.

23 CROSS-EXAMINATION

24 BY MR. PATTERSON:

25 Q. Good morning, Officer.

1 A. Good morning.

2 Q. Just briefly, when you fill out these forms,
3 it's required by the Philadelphia Police Department;
4 is that correct?

5 A. Yes.

6 Q. And you would put the -- any -- for any stop
7 for whatever reason you would put the owner's name of
8 the vehicle to which you had stopped, correct?

9 A. Yes.

10 Q. And when you put the owner's name in this
11 particular traffic stop, where did you get the name
12 from?

13 A. The owner of the vehicle?

14 Q. Yeah.

15 A. From the VIN, when I ran the VIN.

16 Q. Okay. So when you ran the VIN it came back
17 as Donnie Smith, correct?

18 A. I don't recall. I would have to look at the
19 paperwork.

20 Q. If it's on the paperwork that I just looked
21 at as D-O-N-N-I-E Smith, you wouldn't have any reason
22 to disbelieve it. You just don't know because you
23 don't have the form, correct?

24 A. Yes. I don't have the form so I can't --

25 (Pause)

1 Q. Oh, you have it up there. If you can,
2 that's actually -- is that the form that you typed out
3 or filled out?

4 A. Yes, it was.

5 Q. And the owner's --

6 THE COURT: Well --

7 BY MR. PATTERSON:

8 Q. -- name is --

9 THE COURT: -- before you proceed, the
10 form wasn't offered in evidence.

11 MR. PATTERSON: It's not and I'm not
12 asking for that. I'm just asking for --

13 THE COURT: You're just asking him to
14 testify about the form.

15 MR. PATTERSON: I can refresh his
16 recollection, Your Honor. I can do it that way.

17 THE COURT: You can, but that's not
18 what you started to do.

19 MR. PATTERSON: I did not and I
20 apologize.

21 BY MR. PATTERSON:

22 Q. Officer, you originally told me you weren't
23 certain of what my client's name was on the form. So
24 that form is right next to you. Can you please take a
25 look at that, that form right there?

1 A. Yes.

2 Q. Now after you looked at that, does it
3 refresh your recollection of what name you put down as
4 the owner of this car?

5 A. From the form, yes.

6 Q. What -- what is it?

7 A. Donnie Smith.

8 Q. Okay. It's Donnie, D-O-N-N-I-E Smith,
9 correct?

10 A. Yes.

11 Q. It's not Donald Smith, right?

12 A. No.

13 Q. And it's -- and it doesn't say Donald Smith
14 and it doesn't say Dontay Smith either, D-O-N-T-E. It
15 says Donnie Smith, correct?

16 A. Yes.

17 Q. Thank you.

18 MR. PATTERSON: Nothing further.

19 THE COURT: Is there any other cross-
20 examination?

21 MR. WITTELS: No.

22 MS. MEEHAN: No, Your Honor.

23 MS. MARTIN: I have no --

24 THE COURT: Any redirect?

25 MS. MARTIN: -- redirect, Your Honor.

1 THE COURT: Officer Williams, that
2 concludes your testimony. Thank you very much.

3 THE WITNESS: Thank you.

4 THE COURT: Oh, I thought you fell.

5 THE WITNESS: No.

6 THE COURT: Is it working, Michael?

7 THE CLERK: Yes.

8 THE COURT: Next witness.

9 MR. ECKERT: Your Honor, the next
10 witness would be something that counsel would need to
11 discuss with the Court.

12 THE COURT: There's no other witness?
13 We can't schedule this around our break?

14 MR. ECKERT: If I may just have one
15 moment, Your Honor.

16 THE COURT: Yes.

17 (Pause)

18 MR. ECKERT: Certainly, Your Honor.
19 We'll call someone now.

20 THE COURT: Thank you.

21 MR. ECKERT: The Government would call
22 Detective William O'Brien.

23 (Pause)

24 MR. ECKERT: Your Honor, the witness
25 ran to the restroom, but he's going to be in

1 momentarily.

2 THE COURT: All right.

3 MR. ECKERT: Thank you.

4 (Pause)

5 THE CLERK: Please raise your right
6 hand.

7 DET. WILLIAM O'BRIEN, GOVERNMENT WITNESS, SWORN

8 THE CLERK: Thank you. Please be
9 seated.

10 Please state your full name for the
11 record.

12 THE WITNESS: Detective William
13 O'Brien, O-B-R-I-E-N.

14 THE COURT: Good morning, sir.

15 THE WITNESS: Good morning, sir. How
16 are you?

17 MS. MARTIN: May I, Your Honor?

18 THE COURT: You may.

19 DIRECT EXAMINATION

20 BY MS. MARTIN:

21 Q. Good morning, Detective O'Brien.

22 A. Good morning.

23 Q. Detective O'Brien, how are you currently
24 employed?

25 A. I am a detective currently assigned to

1 Northwest Detectives of the Philadelphia Police
2 Department.

3 Q. What does the Northwest Detectives mean?

4 A. Northwest Detectives, Philadelphia portion
5 of the city.

6 Q. Is -- are -- do you encompass a number of
7 police districts in the Northwest section?

8 A. Yes. The 14th District, the 35th, the 39th
9 and the 5th District.

10 Q. Okay. And before you were a detective were
11 you a police officer?

12 A. I was.

13 Q. For how long?

14 A. Six and a half years in the 12th District
15 which is in Southwest Philadelphia.

16 Q. All right. Now were you working as a
17 Northwest Detective on March 22nd, 2019?

18 A. I was. That's correct.

19 Q. And was it Northwest Detectives that was
20 assigned to the investigation, the original
21 Philadelphia police investigation in this case?

22 A. Yes, it was.

23 Q. Did you assist in the investigation on March
24 22nd?

25 A. Yes. I assisted the assigned detective,

1 Detective Cougar (ph).

2 Q. Okay. And what was your role?

3 A. I went out and I recovered video of the
4 incident from inside the store.

5 Q. What day and time did you recover the video?

6 A. March 22nd, 2019 -- '18, somewhere that
7 evening. I don't remember the exact time.

8 Q. Okay. But to -- the jury's received
9 evidence that the incident in question happened around
10 4:55 p.m.

11 A. That's correct.

12 Q. Did you recover video that same night?

13 A. Yes, after the incident.

14 Q. So did you physically go to the scene?

15 A. I did and I scored the video on their DVR
16 system from the inside cameras.

17 Q. Okay. Let's back up for a minute. As a
18 Philadelphia detective in the age of video
19 surveillance, do you have to or do you have any
20 specialized training in the recovery of video
21 surveillance?

22 A. Yes. I had a three-day class in
23 (indiscernible), Pennsylvania with FBI agents,
24 practicals going through different DVR systems and
25 learning how to do a Camtasia program, which was if

1 you ever see news clips and they're asking for help,
2 be able to make compilations to send out to the media
3 for help identifying suspects and other videos and
4 other crimes.

5 Q. As a practical matter is it difficult to
6 recover video from different kinds of systems?

7 A. Every system is different. Some are old and
8 may take a few minutes to learn how, but for the most
9 -- majority you get the video.

10 Q. That night, March 22nd, the investigation
11 was ongoing; is that fair to say?

12 A. Yes.

13 Q. Do you know where the victims were at the
14 time that you were at the store recovering the video?

15 A. Inside the store.

16 Q. They were in the store with you?

17 A. Yes.

18 Q. At some point were they transported to
19 Northwest Detectives to give statements?

20 A. They were.

21 Q. Was that before or after you recovered the
22 video?

23 A. It was after I recovered the video, I
24 believe.

25 Q. Did you participate in transporting them?

1 A. I don't recall if I did or not, or if the
2 patrol cars took them. I don't remember that portion.

3 Q. Okay. Did you sit down and watch the video
4 from every single camera angle that the store had
5 while you were in the store recovering the video?

6 A. No, not in the store, but when we got back
7 to Northwest Detectives after everything was procured,
8 yes.

9 Q. So tell us about what happened at the store.
10 How do you decide what video you're going to recover
11 and how do you physically recover it?

12 A. You have to look at the multiple cameras.
13 The complainants told me what time the incident had
14 occurred approximately. I'm able to go into the DVR
15 system and look for a certain time, search it, bring
16 up the cameras and see how everything played out. And
17 then at that point once I have the times down and the
18 date, and I have to make sure that there's no offset
19 in the time of recovery of what time it actually
20 happened at and what time it is in real time, and then
21 I just have to place a USB and through the computer
22 mouse I can export the video to the USB and then take
23 it to Northwest Detectives for further viewing.

24 Q. Do you remember how many video angles or
25 camera angles that you recovered in this case?

1 A. I believe I took every camera that was
2 inside the store, the interior.

3 Q. Did you complete a video surveillance
4 recovery form in this case?

5 A. Yes, I did.

6 Q. Can you explain for the jury what that is?

7 A. The video -- excuse me. The video
8 surveillance recovery form is proprietary form that
9 Philadelphia police fills out when you go to recover a
10 video. It's basically consent to sign. It says we
11 didn't force them to take the video. We took them
12 without their knowledge. They consent to the form,
13 sign it, and then on the second half of the sheet is
14 -- fill out all the information that's pertinent to
15 the investigation, what time the incident occurred,
16 what time the video was recovered, and offset -- like
17 I explained before, if the time of the videos, the
18 real time to it, time is correct and then there's also
19 a number of cameras. The information is list in the
20 system. Sometimes it's not. Also, how many days the
21 system holds video for if you can find that as well.

22 Q. Earlier you said you couldn't remember what
23 time you were at the store. Would it refresh your
24 recollection if I showed you the form you filled out?

25 A. Yes.

1 MS. MARTIN: If I could have the witness
2 shown what's been marked as Government Exhibit 24.

3 (Pause)

4 BY MS. MARTIN:

5 Q. Detective O'Brien, I have placed in front of
6 you Government's Exhibit 24. Is this the surveillance
7 video recovery document that you filled out?

8 A. Yes, it is. That's correct.

9 Q. Okay. And after reviewing this document
10 does it refresh your recollection as to the time that
11 you recovered the video in this case?

12 A. Yes. So on March 22nd I recovered the
13 video, starting to recover from the USB port at
14 9:45p.m.

15 Q. You stated started to recover. How long
16 does it normally take you to recover video in any
17 given case?

18 A. Everything is fluid. It depends on how much
19 video is taken, how much -- you know, how long, how
20 many cameras and how old the system is. If it's an
21 older system it could take longer. I believe it took
22 me somewhere in the area of 45 minutes that night to
23 recover all the interior cameras. I think it took 20
24 minutes.

25 Q. All right. And on this -- well, let me ask

1 you this. Do you know the retention time of the video
2 system in this case?

3 A. I do not offhand, but I believe it would be
4 on the second page.

5 Q. Okay.

6 MS. MARTIN: If I could have the witness
7 shown the second page.

8 BY MS. MARTIN:

9 Q. Detective O'Brien, does reviewing the second
10 page of the video recovery form refresh your
11 recollection as to the retention time of the video
12 camera?

13 A. Yes. 20 days it holds for.

14 Q. All right. And 20 days at 12 hours a day
15 for let's say 15 cameras, how long would it take you
16 to download that amount of information?

17 A. If I had to guess a week, ten days. It
18 would be a long time to sit there.

19 Q. And in terms of physical storage capacity,
20 do you have the USBs or the hard drives that would
21 actually have the capacity to recover that kind of
22 video?

23 A. It would need multiples. You -- sometimes
24 other systems do not read anything higher than like a
25 16 gigabyte USB drive. So you have to make sure it's

1 a smaller drive when you're pulling the video.

2 Q. How did you make the decision when you were
3 in the store that evening at 9:45 p.m., how did you
4 make the decision on what camera angles you were going
5 to recover?

6 A. Based on what was relayed to us about the
7 incident and then reviewing it, the initial review
8 that everything happened in the store at the time. So
9 I just took the -- all the interior cameras at that
10 time of day.

11 Q. And do you remember the time offset on the
12 video and -- strike that question.

13 Is it fair to say that on every video
14 there's a time stamp in the corner of the video?

15 A. Most of the time, yes. Sometimes not. But,
16 yes, most of the time there is a stamp there.

17 Q. As part of your training and recovery do you
18 determine whether or not that time in the video is
19 accurate to Greenwich mean time or the world standard
20 time?

21 A. Yes. There's an application that was given
22 to us when we had a training to use to look at the
23 time stamp, put in the current time and then you can
24 figure out calculating by there what the offset is, if
25 there's any at all.

1 Q. Did you determine whether or not there was
2 any sort of offset with the video that was recovered
3 in this case?

4 A. Yes. It was small. It was only -- the
5 video was two seconds ahead of time of Greenwich mean
6 time or (indiscernible) time. Yes.

7 Q. So for anything the jury has already seen
8 from that video, real time would be adding two seconds
9 to the video, the time displayed in the video?

10 A. That's correct.

11 Q. While you were recovering the video did you
12 receive any calls to assist with additional
13 investigation in this case?

14 A. No, not while I was recovering the video.
15 No.

16 Q. Did you assist in the investigation of this
17 case in any additional way?

18 A. Yes. I prepared photo lineups back at
19 Northwest Detectives.

20 Q. Can you just explain for the ladies and
21 gentlemen of the jury what a photo array is and how
22 they're complied?

23 A. Okay. For the Philadelphia Police
24 Department, a photo array is conducted with six
25 individual photos. One is your suspect. The other

1 five are fillers that have to look similar to the
2 suspect. The suspect cannot go in to position Number
3 1. I cannot show the photo array as I prepared it.
4 So I would have to give it to another detective or
5 police officers to administer that photo array. It's
6 a double blind administer.

7 And that night there was four photo arrays shown,
8 so I placed the suspect in four different spots in the
9 arrays so there would be no possibility of saying,
10 he's Number 2, pick him. So everybody did not know
11 where the suspect was listed each time he looked at
12 the photo array, just a different victim.

13 Q. You're saying you placed the suspect for
14 each photo array for each individual civilian you
15 placed the suspect in a different location?

16 A. Yes. That's correct.

17 Q. Okay. And then you provide the photo array
18 that you've compiled to another detective?

19 A. Yes. I believe I gave all four of --
20 Detective Cougar and then they were disseminated in
21 headquarters to the victims to look at.

22 Q. And does the person showing the photo array
23 know who the prime or the suspect is?

24 A. No.

25 MS. MEEHAN: Judge, I'm not sure where

1 we're going here, but I think all defense counsel have
2 stipulated that identification is not an issue and
3 we're not challenging the photo array where the
4 identification by Ms. -- made by Ms. Rodriguez, by Mr.
5 Ventura or by Mr. Sanchez.

6 MS. MARTIN: Your Honor, that was my
7 last question --

8 MS. MEEHAN: We can save the jury some
9 time.

10 THE COURT: Pardon me?

11 MS. MARTIN: That was my last question
12 on the subject. It's just if he said a term, I would
13 like to define it for the jury. I'm done on that
14 front, Your Honor.

15 THE COURT: Except I -- it sounds like
16 this line of questioning wasn't at all necessary.

17 MS. MARTIN: Just explaining what else
18 he did in the investigation, Your Honor.

19 THE COURT: Well, we don't have to do
20 everything if it isn't an issue in the case.

21 Is there anything else you wish to ask
22 this witness?

23 MS. MARTIN: There is not, Your Honor.
24 I tender this witness for cross. Thank you.

25 THE COURT: Thank you.

1 Is there any cross-examination?

2 MR. WITTELS: If I may, Judge.

3 CROSS-EXAMINATION

4 BY MR. WITTELS:

5 Q. Good morning, Detective. I'm Barnaby
6 Wittels and I represent Abid Stevens.

7 A. Good morning, Counselor.

8 Q. How are you doing today?

9 A. I'm doing well. Yourself?

10 Q. Thank you. I'm good.

11 Let me start with the identification process.
12 Photos come from a variety of sources, isn't that
13 correct?

14 THE COURT: I'm sorry, Mr. Wittels.
15 The examination on the photo arrays was stopped
16 because --

17 MR. WITTELS: Oh, you're right, Judge.

18 THE COURT: -- of an agreement --

19 MR. WITTELS: Okay. That's fine, then.

20 THE COURT: -- among the three
21 attorneys that identification is not an issue.

22 MR. WITTELS: You're right, Judge.

23 Thank you.

24 BY MR. WITTELS:

25 Q. Who determines how much video from the video

1 surveillance system gets copied?

2 A. The assigned investigator.

3 Q. So was that you?

4 A. I was not the assigned, no.

5 Q. Okay. And how does that work? Does he give
6 you a parameter, say get from Time X to Time Y?

7 A. Every case is fluid. It depends on the
8 situation. I took -- from what we viewed inside the
9 store at the time we were there. I took from the
10 beginning of the incident to I think several minutes
11 past the incident when the alleged offenders left.

12 Q. And how did you determine when the incident
13 began?

14 A. When I just looked at the video. I pulled
15 it at the time the call came out which was
16 approximately --

17 Q. Was the time --

18 A. -- 4:50 p.m.

19 Q. Okay. So you copied from 4:50 p.m. on?

20 A. Yes.

21 Q. So if anything occurred in the store between
22 these people before 4:50 it wasn't retrieved, correct?

23 A. That's fair to say. Yes.

24 Q. Thanks.

25 THE COURT: Is there any other cross-

1 examination?

2 MR. PATTERSON: There is, Your Honor.

3 Oh.

4 MS. MEEHAN: Go ahead.

5 MR. PATTERSON: No. No. Go. Please.

6 MS. MEEHAN: Go ahead.

7 CROSS-EXAMINATION

8 BY MR. PATTERSON:

9 Q. Good morning --

10 A. Good morning.

11 Q. -- Detective. And I'm sorry. What's your
12 title within the Philadelphia --

13 A. Detective.

14 Q. Detective.

15 A. Yes.

16 Q. And do you have any subtitle for that with
17 respect to IT, audio/visual stuff?

18 A. No.

19 Q. Okay. But do you -- you handle -- you've
20 handled this before in other cases where you deal with
21 the digital video recorder, correct?

22 A. That's correct.

23 Q. So if I say DVR to you, you would know
24 that's the digital video recorder, correct?

25 A. Yes.

1 Q. And you would also agree with me that in
2 your past experiences with a DVR in this case and all
3 the other cases -- and you've dealt with other cases
4 with DVR before; is that correct?

5 A. That's correct.

6 Q. You've dealt with DVRs in other cases where
7 there's one camera, four cameras, eight cameras, I
8 think up to 16 cameras, correct?

9 A. Sure.

10 Q. And then from there you can stack the DVRs
11 so you can have 32, 64 or 86 cameras, right?

12 A. Correct.

13 Q. Okay. So you're familiar with how they
14 work, what they do and what you need to do to capture
15 a video; is that correct?

16 A. I have a basic working knowledge of how to
17 export video. Yes.

18 Q. All right. And you would agree with me that
19 since the passage of time there's been an update from
20 the video tapes that they used to use, correct?

21 A. That's -- are you referring to VHS tapes?

22 Q. Yeah.

23 A. Yes. Yes.

24 Q. So you would also agree with me then that a
25 DVR would have the appearance of like a DVD player,

1 correct?

2 A. Yes.

3 Q. And inside the box there would basically be
4 a hard drive similar to a computer, correct?

5 A. Correct. Yes.

6 Q. So a computer would record data, pictures,
7 movies, everything else. This is designed and based
8 on the connections in the back with the CCT cable to
9 capture video feeds, correct?

10 A. Yes.

11 Q. And did you make a determination if the
12 video system that was used at the store had a 13
13 separate cameras, if you remember?

14 A. I don't remember. No.

15 Q. Okay. Could you at least testify that when
16 you captured the video and you compiled the video for
17 today's purposes, that they were all functioning
18 appropriate -- they were all functioning, correct?

19 A. That I know of, yes.

20 Q. As what you know of all the cameras that
21 were installed in the store on the day in question,
22 March 22nd, were all operating and were all recorded
23 -- were all properly being recorded by the DVR,
24 correct?

25 A. Yes.

1 Q. Did you compile at a later point and maybe
2 in preparation of today or for whatever legal
3 proceedings a compiled video of everything?

4 A. A compilation video --

5 Q. Yes.

6 A. -- edit it? No. I did not edit any video.

7 Q. Did you see the finished product of anything
8 that you transferred out of the machine?

9 A. Yes.

10 Q. So you did?

11 A. Yes.

12 Q. Okay. So you've already -- this -- you
13 already stated that you made a judgment call, and this
14 was your judgment call about what cameras you should
15 actually save for a potential trial like today,
16 correct?

17 A. Mine and -- yes. Mine and the assigned,
18 yes.

19 Q. And it was your judgment call based upon
20 your observations of a preliminary viewing of all the
21 cameras and in discussing with the occupants of the
22 store what might be valuable?

23 A. Yes.

24 Q. Okay. You haven't seen the compiled video
25 that we've seen for the last four days?

1 A. I don't believe I have.

2 Q. Okay. Well, let me just ask you this
3 because if we -- I've seen it. The jury's seen it.
4 Everybody else has seen it. If the cameras that you
5 preserved for future prosecution on this case depicted
6 the three actors coming and going from the inside of
7 the store to the outside of the store, I said eight
8 times. Let me be more specific.

9 If I were to tell you that the indoor cameras
10 captured these three individuals coming and going
11 inside the store and outside the store eight times
12 during this alleged incident, you would find that
13 relevant as to what they were doing on the outside,
14 correct?

15 A. Sure.

16 Q. Right? But unfortunately in this situation,
17 and I'm not blaming you. In this situation you didn't
18 capture the outdoor camera that was pointing across
19 the street to the front door of the store; is that
20 correct?

21 A. We recovered the Philadelphia police camera
22 that is right outside the store.

23 Q. Right. But that --

24 A. At Wilson --

25 Q. -- building -- I'm sorry.

1 A. That's all right.

2 Q. That Philadelphia police camera of what
3 we've played so far points away from the store towards
4 the street.

5 A. Yes.

6 Q. Is that correct?

7 A. That's correct.

8 Q. Okay. So, again, there was a camera on this
9 DVR system that was across the street, not at the
10 store, pointing towards the front entrance of where
11 this alleged incident occurred, correct?

12 A. I do not know that. No.

13 Q. We've seen a picture of the screens of that
14 -- what was in the store the day in question. You
15 didn't see any picture of --

16 A. No, not that I remember, no.

17 Q. -- of a front door?

18 A. I probably took the picture of all the
19 screens, but I don't remember seeing that camera being
20 across the street. No.

21 Q. Okay. Not that you actually physically saw
22 the placement of the camera, but did you see the feed
23 from that -- what that camera was capturing of the
24 front outside entrance of the store?

25 A. Yes. Yes. Yes.

1 Q. You did see that?

2 A. Yes.

3 Q. So we do know that when you first initially
4 went there and you made your judgment call that there
5 was a stream, meaning a camera capturing what was
6 going on at the front of the store and outside the
7 front of the store, correct?

8 A. Yes.

9 Q. Okay. And once again, you did not capture
10 that, correct?

11 A. That's correct.

12 Q. Okay. And that was your judgment call based
13 upon your limited observations?

14 A. Again, I took the relevant video that we
15 thought was necessary at the time.

16 Q. Okay. Now going back to the VHS tapes where
17 it had a very limited time to capture, you said that
18 the time to capture on DVR system generally is 20
19 days?

20 A. Oh, it could vary. It could be two days.
21 It could be 48 hours. It depends on how large the
22 hard drive is and how quickly it overturns and re-
23 tapes over --

24 Q. And, again --

25 A. -- for lack of a better word.

1 Q. I'm sorry.

2 A. Go ahead. I'm sorry.

3 Q. It's a continuous loop. It's not like you
4 pull a tape out and put a new tape --

5 A. Yes.

6 Q. -- in?

7 A. That's correct.

8 Q. It just keeps going.

9 A. It just keeps going.

10 Q. When it reaches its limit where there's no
11 more tape, it will just start re-recording over what
12 was captured --

13 A. Old footage.

14 Q. Old footage. Correct. And that's how this
15 machine operated, correct?

16 A. Yes.

17 Q. And you would also agree with me, sir, that
18 there was no audio on this video tape?

19 A. I believe so. Yes.

20 Q. Right. Question, since you've done this
21 before, are store surveillance cameras usually video
22 and audio or just it depends?

23 A. I don't see many -- I don't see much audio.
24 It's usually just the video.

25 Q. And I'm sorry. You said -- I'm getting

1 ahead of myself. You said time to recover on this
2 machine was -- oh, I'm sorry. It took you 45 minutes
3 or 20 minutes to capture what you wanted to capture?

4 A. It took me 45 minutes of 20 minutes of
5 footage to capture. Yes. So it took me 45 minutes to
6 capture 20 minutes of video.

7 Q. Okay. Now -- and I believe you said that
8 the retention time on this machine was 20 days,
9 correct?

10 A. Yes.

11 Q. So from the day that this happened you would
12 have had 20 days to go back and take whatever you
13 possibly thought might have been relevant?

14 A. Yes.

15 Q. Okay. Now you were asked this specifically
16 by the Government. And I hope I have the verbiage
17 right. No. No. Strike that.

18 The Government asked you that it could take a
19 long time to capture a lot of feeds from a lot of
20 different cameras; is that correct?

21 A. That's correct.

22 Q. Did the amount of time that it may have
23 taken you, was that prohibitive of you actually
24 getting feeds from all the cameras or you -- again, it
25 was just your judgment call as to what you thought --

1 A. Again, I was -- I took the relevant video at
2 the time. If the assigned would have asked me to go
3 out and grab more video, I would have went out easily
4 and took more video.

5 Q. Because obviously time -- the amount of time
6 it takes would never factor in in consideration in a
7 crime scene investigation?

8 A. For something like that, no. I was onto my
9 own investigations at the time.

10 Q. I understand. You were onto other
11 investigations?

12 A. Well, I was -- I'm also -- I'm an assigned
13 investigator, so I was investigating my jobs. If he
14 would have asked me to go out and, hey, let's grab
15 more video, I would have went and grabbed more video.

16 Q. When you say he, who's he?

17 A. Detective Gugar (ph) who was the assigned
18 detective in this case.

19 Q. Was he the affiant officer, the one that's
20 responsible for compiling all the discovery in --

21 A. Yes.

22 Q. Okay. So obviously I'm not going to ask you
23 what he did or what he knows, but my question is, do
24 you know if he looked at all the video tape within
25 that 20 days of when you could have went back?

1 A. I don't know if he did or not.

2 Q. Thanks.

3 MS. MEEHAN: Judge, I just have one or
4 two questions.

5 THE COURT: You may proceed.

6 CROSS-EXAMINATION

7 BY MS. MEEHAN:

8 Q. Good morning, Detective --

9 A. Good morning, Counselor. How --

10 Q. -- O'Brien.

11 A. -- are you?

12 Q. How are you?

13 Just -- I just want to clarify counsel for Mr.
14 Smith used the word capture. You went to the store
15 that evening and you said you yourself reviewed video,
16 right?

17 A. The brief several minutes of the incident,
18 yes.

19 Q. Well, 15 or 20 minutes?

20 A. Yes.

21 Q. Okay. And by review you watched it?

22 A. I watched one camera and then I took all the
23 cameras from inside.

24 Q. Okay.

25 A. Once I realized that the -- an incident had

1 occurred.

2 Q. Okay. And you actually had access to the
3 exterior camera footage at that time, same time,
4 correct?

5 A. I would have. Yes.

6 Q. And you reviewed that as well?

7 A. I did not review the outside camera, no.

8 Q. But you determined that it wasn't necessary
9 to, we'll use the word capture or take the exterior;
10 is that right?

11 A. Yes.

12 Q. Okay. But did -- you didn't bother
13 reviewing it; is that what you're saying?

14 A. I did not review it. No.

15 Q. You didn't review it. Okay. But nothing
16 prevented you from taking it that night?

17 A. No.

18 Q. And you said Detective Gugar, did he review
19 what you showed him?

20 A. Yes, when we got back to Northern
21 Detectives.

22 Q. Did anyone else review the cameras -- the
23 interior --

24 A. I'm sure there was multiple people --
25 multiple detectives and police officers that reviewed

1 the camera at some point later on that day or the next
2 day.

3 Q. And so in that 20 -- I'm sorry. In that 20
4 days that all of these people reviewed it, no one made
5 a determination that any additional evidence was
6 necessary; is that right?

7 A. That's correct.

8 Q. Okay.

9 A. At least for video evidence.

10 Q. Video evidence. Correct.

11 A. Yes.

12 Q. Thank you.

13 THE COURT: Is there any redirect?

14 MS. MARTIN: No, Your Honor.

15 THE COURT: Thank you very much, sir.

16 THE WITNESS: Thank you, Your Honor.

17 (Pause)

18 MS. MARTIN: Your Honor, if it's
19 possible to take the morning break at this point?

20 THE COURT: Yes. How long do you
21 anticipate this legal argument will take to present?

22 MS. MARTIN: 15 to 20 minutes.

23 THE COURT: We're not going to allow
24 that much time. We'll recess until -- we'll make it
25 11:30. It's now about 12 minutes after 11, a little

1 bit longer than normal. We have a legal issue to
2 address and it's going to be presented to me now.

3 Mr. Cosgrove.

4 THE CLERK: All rise.

5 (Jury out)

6 THE COURT: Be seated, everyone.

7 I'll hear from you, Ms. Martin.

8 MS. MARTIN: Your Honor, I don't want
9 to speak for Ms. Meehan. I know it's an objection to
10 the cell phone records that we put into evidence and
11 whether or not there is, I believe, a misunderstanding
12 as to things that were communicated between Ms. Meehan
13 and myself last week.

14 I reached out to her to ask if she
15 would stipulate to Maurice Quinn's phone number as of
16 the time of the incident because it appears in parole
17 records that we have in our possession and passed in
18 discovery. Otherwise, I would have to call his parole
19 agent to establish his phone number.

20 The reason it matters, Your Honor, is
21 it goes to the Dontay Smith cell phone records. There
22 are, as I mentioned last night, seven contacts between
23 Maurice Quinn's phone number and the Dontay Smith
24 phone number along with calls between Carlene Webster,
25 Mr. Smith's wife, and the Dontay Smith phone number.

1 I -- as I understood Ms. Meehan's
2 objection -- and, again, I don't want to speak for her
3 --

4 MS. MEEHAN: Then please don't.

5 MS. MARTIN: I'm happy to let her voice
6 her argument. I --

7 THE COURT: The issue is --

8 MS. MARTIN: I believe she --

9 THE COURT: -- the telephone number for
10 Mr. Quinn?

11 MS. MARTIN: Yes. That was the
12 stipulation, Your Honor, as to the phone number for
13 Mr. Quinn and that was my understanding of the
14 stipulation. Yes, Your Honor.

15 MS. MEEHAN: Your Honor, may --

16 THE COURT: And that was --

17 MS. MEEHAN: -- I be heard?

18 THE COURT: -- that stipulation was
19 entered into or the attempt was to stipulate to avoid
20 the need to call the parole agent.

21 MS. MARTIN: Yes, Your Honor. That was
22 my intent.

23 THE COURT: Which would present
24 problems because it would suggest, maybe a little more
25 than suggest that Mr. Quinn was --

1 MS. MARTIN: It's prejudicial --

2 THE COURT: Yes.

3 MS. MARTIN: -- which is why I reached
4 out.

5 THE COURT: Under state supervision
6 after having committed a crime.

7 MS. MARTIN: Yes, Your Honor.

8 MS. MEEHAN: Your Honor, may I be heard
9 on this? I --

10 THE COURT: Yes.

11 MS. MEEHAN: I was mislead by
12 Government counsel last week, and Mr. O'Donnell who is
13 seated next to me was in the room when Ms. Martin was
14 on speaker phone. Ms. Martin called and said, I
15 provided -- the Government provided parole records of
16 Mr. Quinn. We don't plan on using those in any -- in
17 our case in chief for any particular purpose.

18 However, we want to show that Mr. Smith
19 had a phone and one of the ways we can show Mr. Smith
20 had a phone is that he contacted Mr. Quinn.

21 Now there's other ways they could show
22 that. They could show it through his wife, Ms.
23 Webster, and her phone. But she asked me if I would
24 stipulate to Mr. Quinn's phone number and therefore
25 they wouldn't call the parole agent. I would have an

1 objection to that, but that's neither here nor there
2 today.

3 THE COURT: I'm sorry. That might be
4 where you end up today.

5 MS. MEEHAN: Well, Your Honor, if I
6 could be heard. Ms. -- I visited --

7 THE COURT: You are being heard.

8 MS. MEEHAN: -- Mr. Quinn and I
9 discussed the stipulation about this with him, and the
10 secondary reason that she wanted the number for Mr.
11 Quinn was to show that Mr. Quinn and Mr. Smith are
12 friends. And I said I will agree to that. There's no
13 issue. They know each other. They all know each
14 other. That is not in dispute. I would stipulate
15 that they are friends. And she assured me in the same
16 phone call that she would not be using any records to
17 show any inference or make any argument to the jury
18 that there was phone contact to show anything related
19 to a robbery or they contacted each other and that
20 they -- she would then be able to argue to the jury
21 that they -- between these calls there was something
22 being cooked up. That's what was represented to me --

23 THE COURT: She was not going --

24 MS. MEEHAN: -- on last week's --

25 THE COURT: -- to do that or she was?

1 MS. MEEHAN: Correct. That was what
2 was represented to me on the telephone last week.
3 Therefore, I did not raise this issue with the Court
4 in any sort of motion in limine.

5 Today, Your Honor, she wants to present
6 a highlighted, and I'm thumbing through multiple
7 pages. The yellow highlights are Mr. Quinn's -- I'm
8 sorry -- Mr. Smith's phone and then Mr. Quinn's phone
9 is in blue. So not only is the stipulation well
10 beyond, yes, this is Mr. Quinn's number. He and Mr.
11 Smith called each other. They called each other all
12 the time, Your Honor. These records go from March
13 20th, and this is one of the reasons I had an issue
14 with this. If they got all of the records before
15 March 20th it would show that Mr. Quinn and Mr. Smith
16 call each other all the time. They were sending
17 pictures back and forth. Mr. Quinn was at Mr. Smith's
18 birthday party.

19 So the probative value of the calls in
20 that limited period of time that the Government
21 obtained from T-Mobile is really prejudicial to Mr.
22 Quinn if she wants to use it for that purpose. If she
23 wants to say, this is Mr. Smith's phone. We know that
24 because there were contacts between Mr. Smith and Mr.
25 Quinn over a long period of time that have no relation

1 to March 22nd, I'm fine with that. I'm fine with
2 that.

3 But she went well beyond what we had
4 discussed during the phone conversation and now she
5 wants to highlight in blue all the contacts between
6 Mr. Quinn and Mr. Smith that are not related to the
7 robbery. There's a call on March 20th that has no
8 bearing on anything, and then there are calls after
9 Mr. Quinn and Mr. Smith leave the store on March 22nd.
10 That also has no relevance or bearing to whether they
11 conspired or aided and abetted each other before or
12 during the robbery.

13 So this is really prejudicial and it
14 puts a seed in the jury's mind that I think really
15 damages Mr. Quinn's fair trial.

16 THE COURT: And you're -- well, it's --
17 if you had no stipulation it would be admissible. Do
18 you agree with that or not?

19 MS. MEEHAN: No. I would have done a
20 motion in limine, Your Honor, for what purpose does it
21 serve. I was advised the purpose of this stipulation
22 that it's his number and that they're friends was to
23 show that this --

24 THE COURT: All right.

25 MS. MEEHAN: -- is Mr. Quinn's -- Mr.

1 Smith's --

2 THE COURT: Well, now --

3 MS. MEEHAN: -- phone.

4 THE COURT: -- apparently the
5 Government wants to extend the --

6 MS. MEEHAN: Correct.

7 THE COURT: -- offer of proof.

8 MS. MEEHAN: Correct, apparently. Yes.

9 THE COURT: And you're moving in limine
10 now --

11 MS. MEEHAN: Correct.

12 THE COURT: -- unless the Government
13 doesn't intend that.

14 MS. MARTIN: Your Honor, I would just
15 like to clarify. And maybe there's a misunderstanding
16 here. I offered to stipulate to if the Government had
17 obtained phone records from two months prior and two
18 months after the records in front of you, you would
19 see regular communication between Maurice Quinn and
20 Dontay Smith. That's -- I'm still willing to
21 stipulate to that.

22 The fact that they call each other
23 after the robbery, though, I believe is relevant.
24 It's, number one, showing the communication between
25 the phones. But it's the timing of the calls. When

1 Ms. Meehan and I spoke, I promised her and I stand by
2 this, I will not be arguing to the jury that I believe
3 that this robbery was planned days in advance; that
4 they called each other and planned this robbery.
5 That's not the purpose of these records in any way,
6 shape or form. And I offered an immediate limiting
7 instruction if she thinks I have even argued that for
8 a second. I will not argue that.

9 But when it comes to the communication
10 between the phones on the day of the robbery, after
11 the robbery, that's not something that we discussed.

12 MS. MEEHAN: We did discuss it, Your
13 Honor, and I would ask for an offer of proof. What is
14 the argument she would put forth to the jury in
15 closing based on these records that I think are
16 irrelevant and prejudicial.

17 THE COURT: No. She's -- when did you
18 get the exhibit?

19 MS. MEEHAN: Today.

20 MS. MARTIN: Your Honor, if I may --

21 THE COURT: Problem there.

22 MS. MEEHAN: Well, the highlighted
23 exhibit.

24 MS. MARTIN: No. No. They -- it's the
25 exact same copy of the records. It's only the

1 demonstrative with the highlights. It's the exact
2 same information. It's the exact same printout that
3 they received in discovery months and months ago.

4 MS. MEEHAN: We did. But the
5 highlights, including the blue highlighted version I
6 received this morning. That I received this morning.
7 And I was advised --

8 THE COURT: But you had the records?

9 MS. MEEHAN: Right. True.

10 THE COURT: It sounds like you're --
11 well, it's evidence that does not help Mr. Quinn. But
12 what are you unable to do today that you could have
13 done two weeks ago?

14 MS. MEEHAN: I'm not understanding Your
15 Honor's question.

16 THE COURT: Well, you're claiming
17 prejudice and surprise. You had the exhibit. If you
18 had looked at the exhibit you would have seen that
19 there were lots of calls between the two of them and
20 you knew that.

21 MS. MEEHAN: I did know that, but I was
22 advised that she wouldn't be arguing that.

23 THE COURT: She's not --

24 MS. MEEHAN: That's what she told me.

25 THE COURT: -- arguing that. She's

1 arguing, she wants to argue that there were telephone
2 calls after the robbery.

3 MS. MEEHAN: And I was advised that
4 that was not part of her argument.

5 MS. MARTIN: Your Honor, I would argued
6 I would never say that there was advance knowledge or
7 preparation. That's what I said.

8 THE COURT: This is not -- from all the
9 evidence, and this is not me speaking as a judge and
10 opining in the case, but this does not sound like the
11 case, the kind of case the Government would argue was
12 planned. This sounds like something that happened --
13 I'm talking about the evidence I've heard so far and
14 I'm sure the jury is thinking this way. Whatever
15 happened, seems to have happened spontaneously on the
16 day of the robbery, March 22nd.

17 But I don't --

18 MS. MEEHAN: Well --

19 THE COURT: -- get your reasoning for
20 trying to exclude evidence of telephone calls between
21 Mr. Smith and Mr. Quinn after the robbery on --

22 MS. MEEHAN: Well --

23 THE COURT: -- March 22nd.

24 MS. MEEHAN: Well, I'll follow up on
25 Your Honor's words, spontaneous. If it is, in fact,

1 spontaneous, then what is the relevance of showing
2 calls after the robbery other than to -- there's no
3 relevance to them. They're irrelevant. They show
4 nothing. So --

5 THE COURT: Ms. Meehan, are you -- do
6 you mean that?

7 MS. MEEHAN: Well, I don't -- they're
8 not relevant to show conspiracy. They're not relevant
9 to show aiding and abetting. They're not relevant to
10 show Count I robbery.

11 So -- and, furthermore, I think I would
12 have given this a lot more thought, Your Honor, had
13 the Government advised me that -- they did the
14 opposite. Ms. Martin did the opposite. She said, I'm
15 only using it to show that that's Mr. Smith's phone.

16 THE COURT: Well, do you want more time
17 to think it through? We'll withdraw this witness for
18 now and put the witness on later.

19 MS. MEEHAN: Here's what I would ask,
20 Your Honor. I think we can remedy this. I would ask
21 that Ms. Martin not use the highlighted version of the
22 records and she can highlight on the screen with the
23 witness whatever yellow highlights and not highlight
24 Mr. Quinn's calls.

25 And I will agree that -- if we could

1 stipulate that this is a limited -- the Government
2 requested limited phone records and that there was
3 contact between Mr. Smith and Mr. Quinn prior to March
4 20th as she had stated earlier; that she could offer
5 to say that there was frequent -- you know, or
6 whatever --

7 THE COURT: She wants to use the
8 records in addition to establish telephone contact
9 after the robbery.

10 MS. MEEHAN: Which is -- right.

11 THE COURT: Yes. You see when I'm
12 talking to one attorney, I talk to that attorney.

13 MR. PATTERSON: I understand, Your
14 Honor.

15 THE COURT: You'll get a chance to
16 speak, but stop standing up, sitting down.

17 MR. PATTERSON: Thank you, Your Honor.

18 THE COURT: Ms. Meehan, you're not
19 finished.

20 MS. MEEHAN: I'm sorry. So, Your
21 Honor, I -- if you're ruling that you think it is more
22 prejudicial than probative then I would just ask based
23 on the representations that counsel made on the phone
24 last week that that be part of -- that we hammer out a
25 stipulation that these are limited -- this is a

1 limited time period and that there was contact before,
2 you know, well before March 20th between Mr. Quinn and
3 Mr. Smith.

4 I still think that this is very
5 prejudicial and really not necessary. Mr. Smith's
6 already agreed to the instruction of flight. So the
7 fact that his phone and the 911 call is coming in, and
8 I know -- I don't know if Your Honor has made a final
9 ruling on that. But --

10 THE COURT: I haven't. If you heard me
11 yesterday and were listening, I said I was going to
12 rule on that after I heard this argument. But this
13 argument seems to be passing that argument like two
14 ships in the night.

15 MS. MEEHAN: Well, it's sort of related
16 because if Your Honor ruled that Mr. Smith's 911 call
17 isn't coming in, then they don't need to show any
18 evidence of Mr. Smith's phone and, therefore, it
19 doesn't prejudice Mr. Quinn at all.

20 THE COURT: I don't understand what you
21 mean by prejudice. I -- it sounds like from your
22 argument that everything that is adverse to Mr. Quinn
23 is to use your word "prejudicial," and that certainly
24 isn't the law.

25 MS. MEEHAN: Well, I don't think it's

1 -- my primary objection is the calls afterwards are
2 not relevant.

3 Thank you.

4 MS. MARTIN: Your Honor, I can respond
5 on that point. I mean, the calls that are immediately
6 after the robbery, they're within an hour of the
7 robbery. Mr. Quinn is calling Mr. Smith. And then
8 three minutes later Mr. Smith makes the 911 call that
9 we've been talking about. And then ten minutes after
10 that 911 calls him back. And then later that night
11 there's communication between the two phones.

12 I have a real personal problem with Ms.
13 Meehan calling me disingenuous in this instance. I
14 think the records speak for what they are. And I am
15 happy to stipulate to anything on the front end or the
16 back end of these records. But this is nothing more
17 than a demonstrative --

18 THE COURT: I thought this was supposed
19 to be evidence of -- to establish Mr. Quinn's
20 telephone number.

21 MS. MARTIN: That's all I was asking --

22 MS. MEEHAN: Mr. Smith's phone.

23 MS. MARTIN: -- for in the initial
24 stipulation, Your Honor, was stipulating to Mr.
25 Quinn's phone number because I knew she would have an

1 issue with me calling a parole agent. And I agree
2 that that's prejudicial, but I had no other way to
3 establish Mr. Quinn's phone number.

4 MS. MEEHAN: But, Your Honor, she
5 represented -- now she's going really far afield and
6 she's trying to insinuate to the jury -- this is well
7 beyond -- first of all, she told me on the phone on
8 speaker phone with Mr. O'Donnell present that she
9 wouldn't use the phone calls in argument to the jury.
10 It was merely to establish that it was Mr. Smith's
11 phone and that --

12 THE COURT: Well, how can --

13 MS. MEEHAN: -- they were friends.

14 THE COURT: -- I cure that prejudice if
15 I --

16 MS. MEEHAN: But --

17 THE COURT: -- allow it, allow the
18 records.

19 MS. MEEHAN: Well, here's the problem.
20 If she's going to insinuate to the jury that all these
21 phone calls were part of a plan for Mr. Smith to call
22 911 or to go off in a car. There's no evidence of
23 that. But she's insinuating that because he called --
24 he could call him to say, you know, how are you
25 feeling, how are you doing. I heard -- you know, I

1 heard your car was crashed or whatever. We don't know
2 and that's the problem with this evidence. There's no
3 indication -- if it's a text message then that could
4 be relevant depending on what the text message said.

5 But the mere fact that there were phone
6 calls going back and forth is not probative of
7 anything, Your Honor. It's not relevant.

8 THE COURT: And are you willing to stip
9 -- well, I thought that's what you were willing to
10 stipulate to. You keep saying that it's the calls
11 after the robbery that you're objecting to.

12 MS. MEEHAN: Right. She has --

13 THE COURT: And now you're flipping.

14 MS. MEEHAN: No. No, Your Honor.

15 THE COURT: You're all over the place,
16 Ms. Meehan. I have to --

17 MS. MEEHAN: No. You're --

18 THE COURT: -- tell you --

19 MS. MEEHAN: I apologize.

20 THE COURT: Well --

21 MS. MEEHAN: I'll be clearer.

22 I -- they want Mr. -- evidence that Mr.
23 Smith had a phone and he called 911. When I spoke to
24 Ms. Martin last week, that was the substance of the
25 call. They wanted to show Mr. Quinn's phone called

1 Mr. Smith's phone at any point in time, before, after,
2 whatever; that Mr. Smith's phone was in contact with
3 Mr. Quinn's. Therefore, that phone belonged to Mr.
4 Smith.

5 They don't really need Mr. Quinn for
6 that, in all candor, Your Honor, because they have
7 other evidence of that.

8 And then she said if you don't
9 stipulate to the phone number, I'll call the parole
10 agent. I still would have a relevance argument. But,
11 anyway, I said, no, no. That is his phone number and
12 they are friends. And that was the extent of it. And
13 she told me that she would not be making argument from
14 that -- the phone records that it had anything to do
15 with the robbery.

16 And now today she wants to insinuate
17 and wants the jury to infer from that phone contact
18 after the robbery that something nefarious was going
19 on after Mr. Smith left RD Grocery and drove off in
20 the car. And that I think is -- there's no evidence
21 of that. There's -- it's not relevant that the phone
22 --

23 THE COURT: Well, there is evidence.
24 There's a police -- the telephone records, the records
25 that they communicated. There's no evidence as to the

1 substance of the call.

2 MS. MEEHAN: Correct.

3 THE COURT: How are you prejudiced?

4 MS. MEEHAN: Well, because that's --
5 that's the problem, Your Honor. There's nothing there
6 to -- for her to then make this leap for the jury to
7 try to make that Mr. Quinn had anything to do with Mr.
8 Smith and --

9 THE COURT: Well --

10 MS. MEEHAN: -- getting in his car.

11 THE COURT: -- one way to avoid the
12 issue, it seems to me as the issue was presented to me
13 yesterday, is to stipulate to Mr. Quinn's telephone
14 number. That was the initial reason for these
15 records.

16 MS. MEEHAN: Right. But why does she
17 get to argue that these -- that the calls after the
18 robbery -- that was what we had discussed, and I was
19 unprepared. I felt sandbagged this morning with this
20 highlighted version.

21 THE COURT: Well, that might not come
22 in to evidence.

23 By the way, the way you're handling
24 exhibits really, if I were to grade it, it's about a
25 C-. You've got to do better on exhibits. Different

1 exhibit numbers. It's very hard to track.

2 But the highlighted exhibit is
3 something that's objected to. Is the Government
4 willing not to use the highlighted exhibit?

5 MS. MARTIN: Your Honor, can I use it
6 as a demonstrative and not admit it into evidence in
7 any way? I mean, otherwise it's very --

8 THE COURT: The answer is --

9 MS. MARTIN: -- confusing testimony.

10 THE COURT: -- if the exhibit is out
11 because it's unduly prejudicial because of all the
12 emphasis and because I don't see its relevance. You
13 told me yesterday you needed the telephone records to
14 establish Mr. Quinn's telephone number --

15 MS. MARTIN: I --

16 THE COURT: -- to link the call that
17 Donnie Smith made, allegedly made, to this case --

18 MS. MARTIN: Right.

19 THE COURT: -- to Donnie Smith.

20 MS. MARTIN: Right. And that's still
21 true, Your Honor. I mean, the call that happens one
22 hour after the robbery from Maurice Quinn's phone to
23 the Dontay Smith phone, I mean, they were just
24 together. We saw it in the video. That is
25 circumstantial evidence that that is Donnie Smith's

1 phone.

2 THE COURT: Yes. That -- and I thought
3 --

4 MS. MARTIN: Right.

5 THE COURT: -- that was the reason why
6 we're going through this exercise.

7 MS. MARTIN: That is the reason, Your
8 Honor. That is why we're going through it.

9 THE COURT: Well, let's try to figure
10 out a way to get there without inflaming a lot of
11 people and presenting a number of issues that really
12 aren't in the case.

13 MS. MARTIN: Your Honor, I'm not
14 arguing that there was some sort of conversation about
15 the robbery. There's communication an hour after the
16 robbery. That's the facts. Those are the facts. And
17 I have to imagine Mr. Patterson is going to get up in
18 front of the jury and say, that was not Donnie Smith
19 on that 911 call. Well, then why is there a
20 conversation with an alleged co-conspirator three
21 minutes after the 911 call. That's my response to
22 that.

23 THE COURT: Well, I'm -- I want to get
24 this case going and we're not really moving in that
25 direction very quickly. I'm going to rule that

1 exhibit -- does it have a number?

2 MS. MARTIN: Your Honor, I would have
3 been marking it as 47-C.

4 THE COURT: That exhibit is not to be
5 offered into evidence.

6 MS. MEEHAN: Thank you, Your Honor.

7 THE COURT: And it's not to be used as
8 a demonstrative --

9 MS. MARTIN: I understand, Your Honor.

10 THE COURT: -- exhibit.

11 Are you going to stipulate to Mr.
12 Quinn's telephone number or not?

13 MS. MEEHAN: Yes, Your Honor. His
14 number is --

15 THE COURT: Well, wait a minute.

16 MS. MEEHAN: I'm sorry.

17 THE COURT: You don't have to do it in
18 open court.

19 MS. MEEHAN: Very well.

20 THE COURT: You just have to agree with
21 the Government. I don't know how it's going to be
22 used. Does that answer all of these so-called
23 prejudicial legal issues?

24 MS. MARTIN: Your Honor, may I have
25 permission to show the highlighted copies to --

1 THE COURT: No.

2 MS. MARTIN: -- the witness only below?

3 THE COURT: No.

4 MS. MARTIN: No? Okay.

5 THE COURT: You didn't answer my
6 question.

7 MS. MARTIN: I'm sorry.

8 THE COURT: Does the stipulation
9 resolve the issue, the stipulation of Mr. Quinn's
10 telephone number?

11 MS. MARTIN: I believe the objection
12 was Ms. Meehan's. I have no objection. I'm fine with
13 using the records as is. With the stipulation I can
14 proceed. Without the stipulation I can proceed, Your
15 Honor.

16 THE COURT: Does the stipulation
17 eliminate the need to call a representative of the
18 telephone company?

19 MS. MARTIN: No. It eliminates the
20 need to call the parole agent. The phone records
21 still establish the 911 dispatch callback number.

22 THE COURT: Okay. Does that resolve
23 the issue?

24 MS. MEEHAN: Your Honor, I had argued
25 that she shouldn't be allowed to argue about phone

1 calls after the robbery and I don't know if Your Honor
2 --

3 THE COURT: No. I'm going to --

4 MS. MEEHAN: -- ruled on that.

5 THE COURT: I overruled that objection
6 on the ground that the Government is going to try to
7 prove that Mr. Smith made the call and that Mr. Quinn
8 and Mr. Smith were talking three minutes, allegedly
9 three minutes after the call. It's circumstantial
10 evidence.

11 Is there anything else we have to rule
12 on?

13 MR. PATTERSON: If I may, Your Honor.

14 THE COURT: Yes.

15 MR. PATTERSON: This all kind of
16 started with me objecting to what the Government's --
17 how the Government's going to try to prove that my
18 client made this phone call.

19 Again, I already had the officer today
20 testify that according to the Pennsylvania Department
21 of Transportation this car is registered under the VIN
22 number under Donnie Smith, not Dontay Smith. The
23 phone records say Dontay Smith.

24 So obviously yesterday I argued two
25 things: One, how are they going to authenticate the

1 phone records and how are they going to lay a
2 foundation that the records that are purported to be
3 from my client's phone was, in fact, my client's
4 phone.

5 Then the Government said, well, that's
6 going to be easy for me because I'm going to have
7 apparently Dontay Smith and these phone records called
8 Donnie Smith's mother. Why would Dontay Smith call
9 Donnie Smith's mother?

10 Well, then I objected to, well, how are
11 you going to establish that the phone number that's
12 purported to be Dontay -- Donnie Smith's mother is
13 Donnie Smith's mother's phone number? And it's just
14 -- it's a can of worms, like I believe Ms. Meehan said
15 yesterday.

16 And then from there they can prove it
17 by -- again, I hope I'm characterizing the argument
18 yesterday. He called his mom. Then you've got to
19 prove that -- I believe he said mother yesterday.

20 (Pause)

21 MR. SMITH: I said that's my mother
22 address on the --

23 MR. PATTERSON: Oh, mother's address.
24 Okay. So apparently the Government just told me that
25 they're wrong on that issue. So we cannot talk about

1 that because I do remember his mother's address being
2 mentioned yesterday and I said, how you going to prove
3 that. So apparently they're wrong on that, so I'll
4 move just to Mr. Quinn.

5 So now to establish that the phone,
6 that the phone records purported to be from Donnie
7 Smith only on the fact that he called Mr. Quinn.
8 That's it. Why would Dontay Smith be calling Mr.
9 Quinn if it's not, in fact, Donnie Smith's phone?

10 From there it escalated into these
11 calls. And, again, I don't -- my position is any
12 stipulation or any cautionary instruction that Your
13 Honor decides to give or the stipulation read between
14 Ms. Meehan and the Government, my opinion and my
15 objection is you can't cure that perception in the
16 jurors' mind that these two people are calling each
17 other, whether it's a day before, a day after or a
18 month before; that there's some type of communication
19 between these two for this grand robbery on Sharpnack
20 Street. I personally think and my objection would be
21 it cannot be cured by a stipulation.

22 I -- again, I think based upon my
23 theory of the case I think it's cumulative. I think
24 it causes confusion. And, quite frankly, I think it
25 causes issues relative to the entire case insofar as

1 the perception that there's a conspiracy and they're
2 calling each other about it.

3 THE COURT: Well, the Government is
4 going to try to prove a conspiracy.

5 MR. PATTERSON: I -- well, I under --
6 we don't --

7 THE COURT: I'm charging the jury, at
8 least according to what the Government argued and
9 there's no way to keep it out in my judgment, at least
10 I haven't heard from the defendants on how I can keep
11 the issue of conspiracy out of the case. But the
12 Pinkerton charge triggers a charge on conspiracy.

13 MR. PATTERSON: It does, Your Honor.
14 And I read that last night in preparation of that
15 argument at the appropriate time. And doubly so if
16 Your Honor gives that Pinkerton with the corresponding
17 conspiracy charge, that's another reason why these --

18 THE COURT: No. But this is evidence
19 that supports that.

20 MR. PATTERSON: I understand that. But
21 the way they're going about trying to get Mr. Quinn's
22 phone number in relationship to my client's --

23 THE COURT: No. They have Mr. Quinn's
24 phone number now.

25 MR. PATTERSON: They do have Mr.

1 Quinn's phone number now.

2 I understand. I can make the
3 appropriate objections at the appropriate time when
4 they have the records custodian. I am prepared to do
5 that.

6 I further understand that when I go to
7 the jury, I would be permitted to argue weight,
8 meaning, again, what I believe what I said yesterday
9 is the vast resources of the federal government they
10 don't have a voice recognition expert. And then I can
11 hopefully punch holes in this whole thing about the
12 telephone call.

13 Personally, I don't think the telephone
14 call is -- it hurts my case that bad. Do I want it
15 in, no. Do I think it should --

16 THE COURT: Well --

17 MR. PATTERSON: -- be in, no. But I
18 understand and I will respect Your Honor's ruling on
19 that. But I believe I sufficiently put forth my
20 objections to the stipulation to Mr. Quinn's phone
21 number now irrespective of the tape insofar as I think
22 it puts the inference in the jurors' minds that
23 there's a conspiracy.

24 And I understand that Your Honor may be
25 putting conspiracy into the mix, but --

1 THE COURT: No. I'm not putting
2 conspiracy --

3 MR. PATTERSON: I'm sorry.

4 THE COURT: -- into the mix.

5 MR. PATTERSON: The law may provide
6 Your Honor to put a conspiracy into --

7 THE COURT: It may require me to do so.

8 MR. PATTERSON: Right. Absolutely.
9 And I retract my statement.

10 THE COURT: And we can argue that. We
11 will argue that tonight. We tabled that --

12 MR. PATTERSON: I understand.

13 THE COURT: -- on Tuesday night.

14 MR. PATTERSON: So that is my objection
15 and I understand and I respect Your Honor's ruling. I
16 can address it through a weight argument and through
17 cross-examination.

18 THE COURT: Well, I haven't ruled
19 except there's a stipulation as to Mr. Quinn's
20 telephone number. I haven't seen the records, and the
21 idea was we were going to argue the issue of the 911
22 call after I saw the telephone records.

23 MR. PATTERSON: So Your Honor is
24 excluding the exhibit with the highlighted phone
25 records is --

1 THE COURT: I am excluding that. Yes.

2 MR. PATTERSON: Thank you. I have
3 nothing further. Thank you, Your Honor.

4 THE COURT: I'm not quite sure where we
5 went with your argument, Mr. Patterson.

6 MR. PATTERSON: I was trying to --

7 THE COURT: I had --

8 MR. PATTERSON: -- figure it out
9 myself.

10 THE COURT: -- a little trouble
11 following how the Government is going to prove that
12 the telephone call which they say was made by Donnie
13 Smith was, in fact, made by Donnie Smith. But we'll
14 let them proceed with the telephone company records
15 and see where we go. And you can object certainly if
16 you think any of that evidence is improper.

17 MR. PATTERSON: Thank you, Your Honor.

18 So I'll make the objection at the
19 appropriate time on the record then, obviously.

20 THE COURT: Absolutely. That's what I
21 want you to do.

22 MR. PATTERSON: Thank you, Your Honor.

23 THE COURT: Let's take a very short
24 break and try to get back here in five minutes or so.

25 THE CLERK: All rise.

1 THE COURT: Go about your business,
2 everyone.

3 (Recess taken at 11:41 a.m.; reconvened at 11:51
4 a.m.)

5 (Jury present)

6 THE CLERK: All rise.

7 THE COURT: Be seated, everyone.

8 As with most other things in this case
9 it took a little longer than we anticipated, and for
10 that I apologize.

11 The Government may proceed.

12 MR. ECKERT: Your Honor, at this time I
13 would just move Government Exhibit 50 with the
14 agreement of counsel, which is a self-authenticating
15 (sic) document. It's a court record of the
16 defendant, Mr. Smith's marriage to Ms. Carlene Webster
17 and her address in Wilmington, Delaware.

18 MR. PATTERSON: No objection.

19 MR. ECKERT: I would ask just to
20 publish 50, Government's 50 to the jury --

21 MR. PATTERSON: No objection.

22 MR. ECKERT: -- and read the address
23 for the record.

24 MR. PATTERSON: No objection.

25 THE COURT: G-50 is received in

1 evidence.

2 (Government's Exhibit No. 50 was received)

3 THE COURT: It may be published to the
4 jury.

5 MR. ECKERT: Thank you, Your Honor.

6 And just for the record, that's -- Mr.
7 Smith was married to Ms. Carlene Antoinette Webster at
8 2206 North Monroe Street in Wilmington, Delaware.

9 Thank you.

10 THE COURT: You may proceed.

11 MS. MARTIN: Thank you, Your Honor.
12 May I have a moment with counsel?

13 THE COURT: Yes.

14 MS. MEEHAN: Thank you, Your Honor.

15 (Pause)

16 MS. MARTIN: I apologize, Your Honor.

17 MS. MEEHAN: Thank you, Your Honor.

18 MS. MARTIN: Your Honor, I do have one
19 stipulation before I call my first -- my witness.

20 There is a stipulation by and between
21 counsel that defendant, Maurice Quinn's, phone number
22 at the time of March 22nd, 2019 was phone number (215)
23 713-5602. again, (215) 713-5602. So stipulated?

24 MS. MEEHAN: So stipulated.

25 THE COURT: That --

1 MS. MARTIN: And with that, Your Honor,
2 I would call Joseph Sierra.

3 THE COURT: The stipulation, ladies and
4 gentlemen, is an agreement between the parties. And
5 they've agreed on a telephone number and you should
6 accept that as evidence that or reject that as
7 evidence. That's your call. You're the judges of the
8 facts. Treat it as any other piece of evidence in the
9 case.

10 (Pause)

11 JOSEPH SIERRA, WITNESS, SWORN

12 THE CLERK: Thank you. Please be
13 seated.

14 Please state your full name for the
15 record.

16 THE WITNESS: Joseph, J-O-S-E-P-H
17 Sierra, S-I-E-R-R-A.

18 THE COURT: Good morn -- I guess it's
19 afternoon, soon to be afternoon.

20 MS. MARTIN: May I proceed, Your Honor?

21 THE COURT: You may.

22 DIRECT EXAMINATION

23 BY MS. MARTIN:

24 Q. Good morning, Mr. Sierra.

25 A. Good morning.

1 Q. Mr. Sierra, can you tell the ladies and
2 gentlemen of the jury your current occupation?

3 A. Yes. I am a custodian of records for T-
4 Mobile USA Incorporated.

5 Q. So you're employed by T-Mobile?

6 A. Yes.

7 Q. Is it T-Mobile and any other entity?

8 A. T-Mobile is the parent company of Metro PCS.

9 Q. And how long have you been employed in this
10 position?

11 A. A little bit over ten years.

12 Q. What's the nature of your company's
13 business? I know that seems like a silly question,
14 but if you could explain it for the record.

15 A. Yes. We're a telecommunications company.
16 We specialize in cell phones and data devices.

17 Q. And what kind of work or duties, what are
18 your roles and responsibilities with T-Mobile and
19 Metro PCS?

20 A. As a custodian of records I travel across
21 the United States to enter in telecommunications in as
22 evidence at trials.

23 Q. And in that capacity are you familiar with
24 the regularly conducted or normal business practices
25 of T-Mobile and Metro PCS?

1 A. Yes.

2 Q. Are you familiar with the business practices
3 regarding billing records and subscriber information?

4 A. Yes.

5 Q. Can you please explain to the ladies and
6 gentlemen of the jury the record keeping procedures
7 used by T-Mobile and Metro PCS in regard to subscriber
8 and call detail records?

9 A. So subscriber information is going to be the
10 identifying details that a customer provides at the
11 time that they open their account. This information
12 is captured when they open the account and is
13 maintained during their time with T-Mobile or any of
14 our subsidiaries and can be modified by the customer
15 at any time as long as their account is active.

16 Call detail records, the other type of
17 record we provide, is going to be captured at or near
18 the time of the occurrence. Everything is captured
19 electronically, again, at or near the time of that
20 action, and then maintained in our billing system as
21 well as temporarily at the market.

22 Q. What are call detail records?

23 A. Call detail records are transactional logs
24 of incoming and outgoing phone calls and text messages
25 for a particular user during a particular date range.

1 Q. And going back to subscriber information for
2 a moment, does T-Mobile and Metro PCS check anybody's
3 ID when they obtain subscriber information? How do
4 you get that information?

5 A. So it all depends on the type of account
6 that you have. If you are a post-paid customer, which
7 was traditionally understood as a contract customer,
8 but contracts for most carriers are now gone, this
9 would require you to pay after usage. So it would be
10 like a credit. So your social security number, a
11 credit check would be ran, and an ID as well as proof
12 of address would be collected at the time you open
13 your account.

14 For prepaid accounts, ID is not needed
15 because you're paying for service prior to usage, so
16 there's no need for a credit of any kind. Because of
17 that, again, you don't have to provide ID, but we do
18 suggest you provide, you know, a name and address for
19 emergency purposes.

20 Q. Now these subscriber information and call
21 detail records that you've explained, does your
22 company create and maintain both kinds of records?

23 A. Yes.

24 Q. And how are these records maintained?

25 A. Electronically.

1 Q. When are the records created?

2 A. At or near the time of the occurrence.

3 Q. And are these records kept by your company?

4 A. Yes.

5 Q. You said electronically?

6 A. Yes.

7 Q. How long are they kept?

8 A. It depends on the type of account and the
9 date of the account. But currently it would be a two-
10 year retention for call detail records, and for
11 subscriber information it would be seven years or the
12 activeness of the account. So if they were active for
13 eight or nine years, we would still have the
14 subscriber information.

15 Q. And are these records kept in your normal
16 course of business?

17 A. Yes.

18 MS. MARTIN: Your Honor, at this time I
19 would ask that the witness be shown what's been marked
20 as Exhibit 46, 47-A and 47-B. And if I may approach
21 with paper copies for the witness.

22 THE COURT: You may.

23 MS. MARTIN: For the record, in fact,
24 I'm handing the witness what's been marked as Exhibit
25 46, 47-A and 47-B.

1 BY MS. MARTIN:

2 Q. Mr. Sierra, do you recognize the records
3 I've placed in front of you?

4 A. Yes, I do.

5 Q. And did you or another records custodian for
6 T-Mobile respond to a government subpoena or multiple
7 government subpoenas related to this case?

8 A. Yes.

9 Q. All right. And did you return records as a
10 result of those subpoenas?

11 A. Yes.

12 Q. And the records in front of you, are those
13 -- is that the information that was provided by T-
14 Mobile records custodian?

15 A. Yes.

16 Q. Have you confirmed that that was, in fact,
17 the same information that was provided by a different
18 records custodian?

19 A. Yes, previously to coming to court today and
20 then reviewed them again this morning.

21 MS. MARTIN: Your Honor, at this time I
22 would move for the admission of Exhibit 46, Exhibit
23 47-A and 47-B, and ask permission to publish to the
24 jury.

25 MR. PATTERSON: Your Honor, I'm going

1 to object at this point. If the purpose of the
2 exhibit -- I understand the business records custodian
3 is here to testify as to how the records were
4 generated and they were generated within the regular
5 course of business.

6 If they're offered to prove through
7 this witness that the records are purported records of
8 Donnie Smith, even though the subscriber says Dontay
9 Smith, I would object on two grounds: One,
10 authentication meaning that there is insufficient
11 authentication of those records to establish that they
12 belong to my client; and

13 Number Two, insufficient foundation. Same
14 grounds that there's insufficient foundation to
15 establish that the records to which this witness is
16 going to be testifying to are, in fact, the phone
17 records of my client, Donnie Smith, and not Dontay
18 Smith.

19 MS. MARTIN: May I respond, Your Honor?

20 THE COURT: I'm wondering whether we
21 should hear the response in open court. There's an
22 objection to the record on the ground that there's no
23 evidence that the records, and I haven't read them
24 all, but that the records relate to this defendant,
25 Donnie Smith.

1 I think we better get the answer at
2 sidebar.

3 MS. MARTIN: Okay.

4 (At sidebar)

5 THE COURT: Yes.

6 MS. MARTIN: May I, Your Honor?

7 Your Honor, Exhibit 46 is subscriber
8 information for Carlene Webster. She's Donnie Smith's
9 wife. Her phone number appears in the secondary set
10 of records more than 50 times over a four-day period
11 that's also the same time period as the robbery.

12 The phone number in question that --
13 the records we're talking about, they're related to a
14 Dontay Smith, very close to the defendant's name. And
15 with regard, again, to the actual phone records, there
16 are 50 communications, 50 or more in a four-day period
17 between the two phone numbers, the Dontay Smith phone
18 number and the Carlene Webster phone number. There
19 are seven --

20 THE COURT: And this number is --

21 MS. MARTIN: That number, I believe,
22 Your Honor --

23 THE COURT: Well, it's a --

24 MS. MARTIN: -- if I may --

25 THE COURT: Let me finish. G-46 is a

1 single page of records for Carlene Webster.

2 MS. MARTIN: I didn't hear you. I'm
3 sorry.

4 THE COURT: A single page of records
5 for Carlene Webster.

6 MS. MARTIN: That's 46, correct.

7 THE COURT: Yes. That's --

8 MS. MARTIN: I believe he's objecting
9 to --

10 THE COURT: -- Dontay --

11 MS. MARTIN: -- all of them.

12 THE COURT: That's Dontay Smith's wife?

13 MS. MARTIN: Yes. It's Donnie Smith's
14 --

15 MR. PATTERSON: Correct, Your Honor.

16 THE COURT: Well, how do you want to
17 proceed? I can tell you that records or the phone
18 calls can -- there will be an objection on numerous
19 grounds that I'll hear later or maybe we can
20 anticipate it now.

21 The records can be self-identify --
22 self-authenticating and they can also be identified or
23 authenticated by circumstantial evidence. And that's,
24 I think, what the Government is trying to do.

25 I've read some cases in the -- during

1 the break and in many cases very similar to this
2 courts have admitted the telephone records based on
3 the quality of the self-authentication and the
4 circumstantial evidence. The self-authentication
5 would be what was said during the call that links the
6 call to -- links the call and caller to Dontay Smith
7 like identifying the car. And the circumstantial
8 evidence is what we're going through now.

9 But I think we should hear the
10 evidence. There's nothing in these records that's
11 prejudicial. What becomes prejudicial is the
12 telephone call if I conclude there is enough self-
13 authentication, and I'll have to hear the call again,
14 Number One. And Number Two, enough direct and
15 circumstantial evidence linking the caller to Dontay
16 Smith. I think that's the way we should proceed.

17 But the record should come in and we'll
18 see what they're --

19 MR. PATTERSON: I understand, Your
20 Honor.

21 THE COURT: Okay. The bottom line --
22 I'm not ruling now on the admissibility of the call,
23 only the records. Do you have something to say, Mr.
24 Wittels?

25 MR. WITTELS: Yes. Would you tell the

1 jury that this has nothing to do with my client, that
2 it pertains only to Quinn and Smith?

3 THE COURT: Well, I'm going to wait
4 until it's all over rather than do it now.

5 MR. WITTELS: Okay.

6 THE COURT: By all over I don't mean
7 the end of the case. I mean, I'm going to wait until
8 we resolve this issue.

9 MR. WITTELS: Fine.

10 THE COURT: You made a big deal of this
11 issue and it's going to -- now it's the tail wagging
12 the dog and it's -- I just want to be sure it doesn't
13 get wagged out of control --

14 MR. WITTELS: Okay.

15 MS. MEEHAN: And, Your Honor --

16 THE COURT: -- which is where I think
17 we're going.

18 MS. MEEHAN: -- I would agree with Your
19 Honor. This is going to show flight and consciousness
20 of guilt and I think Mr. Patterson already agreed to
21 that instruction.

22 THE COURT: What? I'm sorry.

23 MS. MEEHAN: This is meant to show
24 flight and consciousness of guilt, the 911 call, and
25 these records. And that's already been stipulated to

1 by Mr. Patterson. We've already agreed to --

2 THE COURT: What's been stipulated to,
3 not consciousness of guilt?

4 MS. MEEHAN: Consciousness of -- I
5 thought --

6 MR. PATTERSON: Yes.

7 MS. MEEHAN: -- Mr. Patterson agreed.
8 Yes.

9 MS. MARTIN: Your Honor, if Mr.
10 Patterson wants to stipulate as to the authenticity of
11 the 911 call and that it's Donnie Smith, I don't have
12 to present any of this rec -- any of these --

13 MS. MEEHAN: No. That's cumulative
14 evidence of consciousness of guilt, which is why --

15 THE COURT: With you, Ms. Meehan, I'm
16 learning --

17 MS. MEEHAN: -- (indiscernible).

18 THE COURT: -- that everything that
19 adversely affects a defendant is prejudicial and
20 should be excluded. And we're not going there,
21 obviously.

22 What we're talking about becomes
23 relevant to establish foundation for the 911 call.

24 MR. PATTERSON: I understand.

25 THE COURT: And I'm not -- for example,

1 I would not necessarily rule in this case that calls
2 between Smith and Quinn after the robbery were
3 admissible but for the 911 call and it's timing vis-à-
4 vis the robbery and the calls between Smith and Quinn.

5 MR. PATTERSON: If they're attempting
6 to establish that, yeah, those phone records that are
7 for Dontay Smith are, in fact, Donnie Smith and they
8 can do it two ways. They can say, one, he's calling
9 Carlene Smith which is Donnie Smith's wife and, two,
10 he's calling Quinn which is apparently Donnie Smith's
11 friend. That's fine. They can do that. I can make
12 my objections and I can argue weight at the
13 appropriate time.

14 When and what time before or after this
15 alleged incident that he calls Quinn is not necessary,
16 just the fact that he calls Quinn and that he calls
17 his wife. So he's calling -- Dontay Smith is calling
18 two people that Donnie Smith knows well, his wife and
19 his friend, Quinn. That's all they have to show.
20 They don't have to show that when they're calling
21 them, before or after this alleged incident.

22 THE COURT: Except the timing of the
23 call supports the Government's position on the 911
24 call.

25 MR. PATTERSON: And that goes to the

1 inference, that goes to the inference that I was
2 arguing about before the sidebar that any inference
3 that he's calling after the -- after this alleged
4 conspiracy is concluded that shows that there was --
5 that they were in cahoots, for much of a better word,
6 with respect to --

7 THE COURT: Well, you have to -- the
8 facts are there. You have to figure out how best to
9 address them.

10 MR. PATTERSON: And I'm trying.

11 THE COURT: Well, not -- well, I'm not
12 going to comment. But there are three defense lawyers
13 and I'm sure between you, you could have come up with
14 a way to resolve this issue --

15 MR. PATTERSON: I understand.

16 THE COURT: -- and you haven't. And
17 all I can tell you is that the call can be self-
18 authenticated and I think there's evidence in the call
19 itself that lends support to that argument, and it can
20 be supported by circumstantial evidence such as the
21 telephoning that we're talking about between Quinn and
22 Smith, and that's why -- what the Government proposes
23 is relevant.

24 Now if you can find a way to agree around
25 that, go ahead and tell me. But I don't think you

1 can, at least you haven't up to this point.

2 THE COURT: And I think since we're all
3 here I would like to place on the record that all
4 communications between myself and Mr. Smith has
5 stopped. I just want to place that on the record.

6 THE COURT: All communication between
7 --

8 MR. PATTERSON: My -- me and my client
9 have ceased.

10 THE COURT: Why is that?

11 MR. PATTERSON: He's just not happy the
12 way things are going, so --

13 THE COURT: Well --

14 MR. PATTERSON: -- there's very little
15 input I can get from him with respect to any
16 stipulations or any matters from this day forth. I
17 just want to state that on the record.

18 MS. MEEHAN: Your Honor, without
19 knowing what the calls -- the content of the calls,
20 the fact that Mr. Quinn is being dragged into this 911
21 issue --

22 THE COURT: Now wait a minute. Dragged
23 in because he --

24 MS. MEEHAN: -- when he's got nothing
25 to do --

1 THE COURT: -- he's -- his --

2 MS. MEEHAN: He didn't call 911, Mr.
3 Quinn. Who knows what he -- he could have said, well,
4 you injured me --

5 THE COURT: You're running -- now that
6 argument, you know, has done a complete
7 (indiscernible).

8 MS. MEEHAN: Well, I don't know.

9 THE COURT: It won't because it's
10 circumstantial evidence that the caller was Dontay
11 Smith.

12 MS. MEEHAN: But the --

13 THE COURT: I'm sorry. Donnie Smith,
14 my -- Donnie Smith, the defendant. Well, I don't
15 think we need to spend any more time. You --

16 MS. MEEHAN: Very well.

17 THE COURT: -- know where I'm going.

18 MS. MEEHAN: Yes.

19 MR. PATTERSON: I understand, Your
20 Honor.

21 THE COURT: And you know where you are
22 going to end up --

23 MR. PATTERSON: Yes.

24 THE COURT: -- based on everything I
25 know. Now if it changes by virtue of the evidence,

1 I'll expect you to argue, object and argue again. I'm
2 not foreclosing further argument.

3 MR. PATTERSON: Thank you, Your Honor.

4 MS. MARTIN: Thank you.

5 (Sidebar concluded)

6 THE COURT: You may proceed.

7 MS. MARTIN: Are the exhibits admitted,
8 Your Honor?

9 THE COURT: Yes. We're talking about
10 Government 46 --

11 MS. MARTIN: 47-A & --

12 THE COURT: -- 47-A --

13 MS. MARTIN: -- 47-B.

14 THE COURT: Let me just turn there.
15 47-A and 47-B.

16 (Government's Exhibit Nos. 46, 47-A & 47-B were
17 received)

18 MS. MARTIN: May I proceed, Your Honor?

19 THE COURT: You may.

20 MS. MARTIN: Permission to publish to
21 the jury 46.

22 THE COURT: You may do so.

23 MS. MARTIN: And could you please zoom
24 in?

25 BY MS. MARTIN:

1 Q. Mr. Sierra, what are we looking at in
2 Exhibit 46?

3 A. This is going to be subscriber information
4 for T-Mobile phone number (267) 742-6641.

5 Q. Again that was (267) 742-6641?

6 A. Correct.

7 Q. And who is the subscriber associated with
8 that account?

9 A. A Carlene, C-A-R-L-E-N-E, Webster,
10 W-E-B-S-T-E-R.

11 Q. And what's the address associated with that
12 account?

13 A. 2206 North Monroe Street, Apartment 2,
14 Wilmington, Delaware 19802-4073.

15 MS. MARTIN: And if I could have the
16 witness shown what's been previously admitted as
17 Exhibit 50?

18 BY MS. MARTIN:

19 Q. Mr. Sierra, do you see a document in front
20 of you?

21 A. Yes, I do.

22 Q. And do you see an address listed for Carlene
23 Webster?

24 A. Yes, I do.

25 Q. And is that the same address listed in

1 Government's Exhibit 46, the T-Mobile subscriber
2 information?

3 A. Yes.

4 Q. All right. Can we go to Government's
5 Exhibit 46-B, please? Oh, I'm sorry. One more on
6 Exhibit 46, Mr. Sierra. Was this account active as of
7 March 22nd, 2019?

8 A. Yes.

9 Q. And can you tell based on what you have in
10 front of you whether or not this was a prepaid account
11 or a post-paid account?

12 A. This was a prepaid account.

13 Q. Okay.

14 (Pause)

15 MS. MARTIN: Moving to Exhibit 47-A, if
16 that can be placed on the screen and enlarged as well.

17 Thank you.

18 BY MS. MARTIN:

19 Q. Mr. Sierra, what are we looking at here in
20 Government's Exhibit 47-A?

21 A. This is also subscriber information, but for
22 target number (267) 333-9443.

23 Q. And who is the subscriber associated with
24 this account?

25 A. A Dontay D-O-N-T-A-Y, last name Smith,

1 S-M-I-T-H.

2 Q. Okay. And what is -- what are the dates
3 covered or what were the dates that this phone was
4 active?

5 A. February 16th, 2019 through March 27th,
6 2019.

7 Q. And can you tell whether or not this is a
8 prepaid or post-paid account based on this document in
9 front of you?

10 A. This is going to be a prepaid account.

11 Q. Meaning that there was no verification of
12 the name of the subscriber identification information
13 prior to the phone becoming active?

14 A. Correct.

15 Q. Can you use any name when you subscribe
16 using a prepaid?

17 A. Yes.

18 Q. And, again, for the record that phone number
19 was (267) 333-9443; is that accurate?

20 A. Yes.

21 Q. Okay. Now were there any call detail
22 records associated with this Dontay Smith phone
23 number?

24 A. Yes.

25 MS. MARTIN: And can I have the witness

1 shown what's been marked as Exhibit 47-B and admitted
2 into evidence?

3 BY MS. MARTIN:

4 Q. All right. Mr. Sierra, what are we looking
5 at?

6 A. This is going to be a call detail record for
7 phone number 267-333-9443, covering the dates of March
8 20th, 2019 through April 15th, 2019.

9 Q. And these are the records associated with
10 the Dontay Smith subscriber information; is that
11 right?

12 A. That is correct.

13 Q. Okay. And as we proceed, I would like to
14 refer to the Dontay Smith phone number or the Dontay
15 Smith phone records and phone number associated with
16 the Dontay Smith number and the same for the Carlene
17 Webster number; is that okay?

18 A. Okay.

19 Q. All right. We're looking at a lot of
20 numbers and a lot of lines. Can you walk the jury --

21 MS. MARTIN: And, Agent Orchulli, if
22 you could, just zoom in on the top gray bar there.

23 BY MS. MARTIN:

24 Q. Can you walk the jury through what we're
25 looking at?

1 THE COURT: What exhibit is on the
2 screen?

3 MS. MARTIN: That's 47-B, Your Honor.

4 THE COURT: Thank you.

5 THE WITNESS: So this is going to be
6 the column headers for the call detail record. Again,
7 this is a transactional log of incoming and outgoing
8 phone calls and text messages.

9 A majority of the information you will
10 see here is what you would see on your cell phone
11 bill: The date; the time; the number communicated
12 with; the type of transaction; and if a voice
13 transaction, for how long that communication was.

14 Starting from the left going to the
15 right the first column header is going to be the date.
16 This is the date that the transaction took place.

17 The next column is going to be the
18 time. The time is recorded in military, so 2400
19 hours, UTC time. UTC is universal coordinated time.
20 It is not a time zone in itself like eastern time
21 where Pennsylvania is located, but a standard for
22 understanding time. So UTC has the same starting
23 point as Greenwich Mean Time, GMT. And in order to
24 understand the difference or conversion rate from GMT
25 to the eastern time zone, the time zone we're in now,

1 you have to count how many time zones apart they are.

2 So between GMT or UTC starting point
3 and eastern time it is five time zones to the left.
4 So it would be minus five.

5 Now the eastern time zone also
6 recognizes daylight savings time. Because of that,
7 that results in a loss of an hour. So this record
8 occurred in March of 2019, which would be considered
9 daylight savings time. So even though normally it is
10 five hours, it would actually be four hours at the
11 time of this record would be the time difference. So
12 any time stamp you see here, you have to subtract four
13 hours.

14 So, for example, if the time stamp was
15 4 p.m., the time stamp that occurred here in
16 Pennsylvania would be noon because you have to
17 subtract the four hours.

18 The next column is going to be
19 duration. This is the length of the phone call
20 measured in seconds. The only caveat for this is that
21 for text messages -- for -- excuse me. Let me correct
22 that. Certain types of text messages, they may show a
23 60-second duration. If it is a text message that has
24 a duration of 60 seconds, that just means that it was
25 one message sent because 60 seconds, one minute, one

1 message. That's the only duration that would show
2 that doesn't have a measurement of time.

3 The next column is going to be the call
4 type. This allows us to understand what type of
5 transaction occurred, whether it be a voice call or a
6 text message.

7 The next column is going to be
8 direction. This allows us to know if that call type,
9 the previous column, is an incoming transaction or an
10 outgoing transaction.

11 The next column is the calling number.
12 This would be the number that placed the transaction,
13 voice or text.

14 The next three columns, dialed number,
15 called number and destination number, all have to do
16 with the receiving party. Okay. On most occasions
17 you will see, if all three columns are populated, the
18 number is the same number in all three columns. The
19 reason we divide these into separate columns is
20 because we need to identify other types of number
21 communications, such as speed dial or FCC short codes.

22 So a good example to understand the
23 distinction of the three columns would be is if we
24 image your home or your cell phone number calling your
25 home number using speed dial. All right. So we'll

1 say your home phone number on your cell phone is speed
2 prompt number 2. The calling number would be your
3 cell phone number. The dialed number and the called
4 number would show a 2 or a #2 because that is the
5 function for speed dial. But in the destination
6 number column it would show your full home phone
7 number because that's the true or translated number
8 that it connected to. So that's why we have three
9 columns that essentially show the same information.

10 The next column is the IMSI. This is
11 the International Mobile Subscriber Identifier. This
12 is a lot like your social security number on the T-
13 Mobile network because within T-Mobile you can change
14 your phone number, your cell phone, the type of
15 account you have as well as a few other things. We
16 need a number that identifies you as a customer
17 regardless of changes to make sure we're billing the
18 right person. So this is what the IMSI is.

19 The next column is the IMEI, the
20 International Mobile Equipment Identifier. Think of
21 this like the VIN number of your car, but the serial
22 number for your cell phone. It's unique to the one
23 device just like this -- the VIN number is unique to
24 that one car.

25 The next column is completion code.

1 This is really more for our engineers. This just
2 allows us to make sure that the phone call went
3 through the default pathway. It really has nothing
4 else to do with the call record.

5 Service code, this allows me to know
6 what happened during the call, if anything unique
7 happened. For example, call waiting, call forwarding,
8 if it was forwarded to voice mail. There are
9 numerical codes that allow me to know that something
10 in addition to just the connection of the call
11 occurred.

12 And then finally the switch name. This
13 allows me to know what server routed the call to its
14 destination.

15 BY MS. MARTIN:

16 Q. All right. So let's take a look at these
17 records that we have in front of us.

18 MS. MARTIN: Thank you, Agent Orchulli.

19 BY MS. MARTIN:

20 Q. Mr. Sierra, did I ask you to look at these
21 records to determine whether there was any
22 communication between the Dontay Smith phone number
23 and the Carlene Webster phone number?

24 A. Yes.

25 Q. All right. And starting on -- were you able

1 to do that?

2 A. Yes, I was.

3 Q. Okay. And starting on March 20th, 2019 to
4 March 24th of 2019, can you estimate for the jury how
5 many contacts or communications there were between the
6 Dontay Smith phone number and the Carlene Webster
7 phone number?

8 A. Back and forth, incoming and outgoing
9 transactions of phone calls and text messages it was
10 over 50 communications.

11 Q. Over 50 communications in that four-day
12 period?

13 A. Correct.

14 Q. Which includes March 22nd of 2019?

15 A. Yes.

16 MS. MARTIN: And if we could just place
17 page 6 on the screen as an example?

18 And, Agent Orchulli, if you could
19 please highlight the calling numbers. That would be
20 the fifth and sixth columns.

21 BY MS. MARTIN:

22 Q. Mr. Sierra, are you looking at page 6?

23 A. Yes.

24 Q. Is it fair to say that 95 percent of the
25 incoming and outgoing calls that exist on this page

1 are to or from the Dontay Smith and Carlene Webster
2 phone number?

3 A. Well, the record is for Dontay Smith.

4 Q. You're right, Mr. Sierra. That was a bad
5 question.

6 Is it fair to say that there is contact with
7 the Dontay Smith -- that 95 percent of this page
8 exhibits contact between the Dontay Smith phone number
9 and the Carlene Webster phone number?

10 A. Yes. That's correct.

11 Q. And is there contact between those two phone
12 numbers on March 22nd of 2019?

13 A. Yes. There's contacts on March 22nd, 2019
14 between the Dontay Smith and the Carlene Webster.

15 Q. And that contact continues through the
16 remainder of the records; is that fair to say?

17 (Pause)

18 A. Yes. There's communications after the 3/22
19 date.

20 Q. Did I also ask you to review these records
21 to determine whether or not the phone number of 215-
22 713-5602, a phone number that's been stipulated as
23 Maurice Quinn, did I ask you to review these records
24 to determine whether or not there was any
25 communication between the Maurice Quinn phone number

1 and the Dontay Smith phone number?

2 A. Yes.

3 Q. All right. And these dates between March
4 20th of 2019 and the end of the records, did you
5 determine how many contacts, if any, there were
6 between these two phones?

7 A. I believe there was eight.

8 Q. Okay. And now I want to turn your attention
9 directly to -- that was both before and after March
10 22nd?

11 A. Correct.

12 Q. I would like to turn your attention to the
13 date of March 22nd in particular in these records.

14 A. March 22nd spans a few pages. Do you have a
15 particular page?

16 Q. The beginning and I will direct you to a
17 time.

18 THE COURT: What page?

19 BY MS. MARTIN:

20 Q. Well, Mr. Sierra, let me ask you this. The
21 jury has seen video footage of an incident that occurs
22 around 4:55 p.m. Can you tell me whether or not there
23 are any phone calls, text messages or activity on
24 these cell phone records after 5 p.m. on March 22nd,
25 2019? And, again, if you could explain for the jury

1 how you would convert these records to the actual
2 Eastern Standard Time.

3 A. Yes. So if the incident occurred at 5 p.m.
4 in Philadelphia, you would need to add the four hours
5 because we're going from Philly -- from eastern time
6 now to UTC as opposed to UTC to Philadelphia. So you
7 would add four hours. So what is that, 1700 is 5
8 p.m., so adding the five is 21, which would be 9 p.m.

9 Q. Okay. Is there any activity on this phone
10 just after 5 p.m. on March 22nd of 2019?

11 A. Yes. I see 2106, 21 -- so activity,
12 multiple 2106 activity and a couple 2107 activity.

13 Q. Okay.

14 MS. MARTIN: If I could just have a
15 moment, Your Honor.

16 THE COURT: You may.

17 (Pause)

18 BY MS. MARTIN:

19 Q. Mr. Sierra, you mentioned that there is, in
20 fact, a contact at 2106; is that right?

21 A. Yes. I have 210621, 210645, 210650 and
22 210652.

23 Q. Let's start with the 2106. First of all,
24 what time is that in Philadelphia?

25 A. That would be 5:06 p.m.

1 Q. All right. 5:06 p.m. I'm just looking at
2 it. So what's in front of the jury now? We have a
3 portion of 47-B --

4 MS. MARTIN: If I may, Your Honor, just
5 so I can see what's on the screen.

6 BY MS. MARTIN:

7 Q. I want to direct your attention to the
8 fourth line down. That's the 210652 call that you're
9 talking about; is that accurate?

10 A. Yes.

11 Q. And can you tell us if that is an incoming
12 or outgoing call from the Dontay Smith number?

13 A. That is going to be an outgoing voice call.

14 Q. Meaning that the person with the handset
15 dialed a phone number?

16 A. That is correct.

17 Q. And how long is that phone call starting at
18 5:06 p.m.?

19 A. That's 1,219 seconds, a little bit over 20
20 minutes.

21 Q. Okay. So that's a 20-minute phone call that
22 starts at 5:06 p.m.; is that right?

23 A. Yes.

24 Q. And I want to direct your attention to the
25 lines below that. Do you recognize any of the

1 numbers, and I'm counting from the -- what's on the
2 screen, one, two, three, the four lines below that 20-
3 minute phone call. Do you recognize any of those
4 phone numbers as belonging to Carlene Webster?

5 A. Let's see. Yes. One, two, three. I see
6 four lines of information that reference the 6641
7 number registered to Carlene Webster.

8 Q. Okay. And I see multiple lines here of
9 incoming, outgoing, incoming, outgoing, incoming. Can
10 you explain that for the jury? Does that mean there
11 was a call from Carlene Webster and then from Dontay
12 Smith back to Carlene Webster?

13 A. So by the system's information yes, but in
14 reality no. So what we're seeing here is actually
15 voicemail occurring. So it's an incoming phone call,
16 followed by an outgoing transaction to that person's
17 voice mail. The literal example of what voicemail
18 looks like according to our computer system.

19 So, for example, we have --

20 Q. Mr. Sierra, if I can interrupt you. You can
21 actually touch that screen and circle what it is
22 you're talking about.

23 A. That's exactly what I was going to ask.

24 Q. Okay.

25 (Laughter)

1 A. So we have here first above, just above the
2 red light at 210705 you see an incoming transaction
3 from 267-742-6641 to the target number ending in 9443.
4 You will notice that approximately 31 seconds after
5 that at 210736 you see the same duration of four
6 seconds an outgoing call from the 6641 number to 805-
7 637-7249. This number right here is the voicemail
8 platform number for T-Mobile. So that means you were
9 literally forwarded to voicemail. And the number that
10 was forwarded would be the number shown here in the
11 calling column, the 6641 number. The time it takes
12 for voicemail to initiate if it's allowed to ring
13 through is 30 seconds. That's why you have a 31-
14 second difference between 210705 and 210736.

15 Q. Okay. So looking at this -- these records
16 there is an incoming call from Carlene Webster that
17 goes to voicemail at 5:07:05 --

18 A. Yes.

19 Q. -- at 5:14:42 --

20 A. Correct.

21 Q. -- and at 5:27:56.

22 A. So the 5:27:56 is actually an incoming phone
23 call --

24 Q. Okay.

25 A. -- for 82 seconds.

1 Q. The first two were calls that went to
2 voicemail; is that right?

3 A. Yes. The 21 -- oh, the first two? Yeah. I
4 apologize. I was looking at the call before that, the
5 first two calls before that.

6 Q. So 5:07, 5:14, nobody answers and then at
7 5:27:56 there's some sort of duration associated with
8 the call between Carlene Webster and Dontay Smith?

9 A. Correct.

10 Q. Does that means there's some sort of
11 communication?

12 A. Yes, because since it's not forward to
13 voicemail and there's a duration in the column, that
14 would mean a connection occurred. I can't say if
15 somebody spoke to somebody, but I see a voice
16 transaction that was open for 82 seconds.

17 Q. All right. And looking down the records
18 through to 5:35 p.m., do you see any other
19 communications between the Dontay Smith phone number
20 and the Carlene Webster phone number?

21 A. I apologize. Can you repeat that question?

22 Q. Do you see between what we just discussed,
23 the last one was the 2114, so 5:14, between 5:14 p.m.
24 and 5:35 p.m., so 2135 on what you're seeing, are
25 there any additional communications between the Dontay

1 Smith phone number and the Carlene Webster phone
2 number?

3 A. Yes. There are a few more communications
4 between 2114 and 2135.

5 Q. Okay. I want to direct your attention
6 specifically to 5:43 p.m. and 36 seconds. So that
7 would be 214336. Are there any outgoing calls in
8 these phone records for 5:43 p.m. and 36 seconds?

9 A. No.

10 Q. Okay. Mr. Sierra, if an individual calls
11 911 would you expect it to appear in your records?

12 A. No, I would not.

13 Q. Why?

14 A. Well, 911 operates differently than any
15 other kind of transaction. One, 911 has their own
16 antenna infrastructure so they actually have 911 based
17 antennas deployed throughout the United States.

18 In addition to that, the FCC requires that
19 every handset, so every cellular device, has to be
20 able to dial 911 whether that account is active,
21 whether it has any kind of service connected to it.
22 So I have a cell phone from eight years ago, I can
23 dial 911 on that and it would show up for a 911
24 dispatcher.

25 Because of that you have a situation where

1 you can utilize 911 antennas for Verizon, AT&T,
2 Sprint, so the potential possibility of you utilizing
3 a T-Mobile tower is reduced the more carriers that are
4 available in your area in addition to the 911
5 antennas.

6 Q. So you wouldn't expect to see it in the
7 records then?

8 A. Yeah. It happens very rarely.

9 Q. Between the times of 5 p.m. and 6 p.m., are
10 there any communications between the Dontay Smith
11 number and the Maurice Quinn number?

12 A. If I could have the digits for that again.

13 Q. It would be --

14 MS. MEEHAN: I'll stipulate that it's
15 215-713-5602.

16 THE WITNESS: And what was the time
17 frame?

18 MS. MARTIN: That would be 3/22/19
19 between 2145 and 2200.

20 THE WITNESS: Yes. I see 2147 and that
21 is the only communication I see.

22 BY MS. MARTIN:

23 Q. So that would be at 5:47 p.m. there's an
24 incoming call from the Maurice Quinn number?

25 A. That is correct.

1 Q. The line directly below that, 2153, is that
2 an outgoing call to the Carlene Webster number?

3 A. That is correct.

4 Q. So that would be at 5:53 p.m.?

5 A. Correct.

6 Q. The next line, 3/22/2019, 2205 --

7 MS. MARTIN: And if I could have just a
8 moment, Your Honor?

9 (Pause)

10 BY MS. MARTIN:

11 Q. Mr. Sierra, the record on the screen right
12 now, 3/22/2019, 220005, first of all, what time is
13 that in Philadelphia?

14 A. That would be 6 p.m. and five seconds.

15 Q. Okay. And is there a duration associated
16 with this call?

17 A. Yes.

18 Q. And what is it?

19 A. 136 seconds.

20 Q. How long is that?

21 A. Two minutes and 16 seconds.

22 Q. Very good.

23 And the number that that call is coming in
24 from, can you read that number for the record?

25 A. Incoming phone call from 215-686-3128.

1 Q. Do you know what that number is?

2 A. No, I do not.

3 Q. Okay. And I just want to move down the
4 records a couple more lines. At 6:06 and 12 seconds,
5 is there a contact between the Dontay Smith number and
6 the Carlene Webster number?

7 A. Yes.

8 Q. And what is it?

9 A. At 6:06 p.m. and 12 seconds I have an
10 outgoing 136-second phone call from the 9443 number to
11 6641.

12 Q. Okay. And skipping one line down to
13 3/22/19, 2116 or 6:16 p.m., is that a contact between
14 the Dontay Smith number and the Maurice Quinn number?

15 A. Yes. I have at 2216 an incoming call from
16 the 5602 number to the 9443 number.

17 MS. MARTIN: If I could have just one
18 moment, Your Honor?

19 (Pause)

20 MS. MARTIN: I have nothing further for
21 this witness, Your Honor.

22 THE COURT: Thank you.

23 MS. MEEHAN: Your Honor, I have a brief
24 number of questions. I don't know if Your Honor --

25 THE COURT: Well, it's not quite

1 quarter of one and in order not to limit you, I think
2 we'll recess for lunch.

3 Ladies and gentlemen, one hour. Usual
4 instructions. You know still more about the case.
5 Don't be tempted to discuss it among yourselves. You
6 must wait until the case is over, until all the
7 evidence is in and you've heard my instructions on the
8 law, then you may begin deliberating.

9 If anyone tries to talk to you about
10 the case, say nothing to them, and then report that to
11 me. And, again, don't -- well, I guess you wouldn't
12 have -- well, you might read newspapers over the noon
13 recess. Don't read anything dealing with the case.
14 Don't listen to anything that might be broadcast on
15 radio or television that deals with the case.

16 And be sure you take your juror
17 notebooks into the jury room and leave them there.

18 We will recess until quarter of two.
19 It's quarter of one now.

20 THE COURT OFFICER: All rise.

21 (Jury out)

22 THE COURT: Be seated, everyone.

23 Is there anything we must do before the
24 luncheon recess?

25 MR. PATTERSON: If I may have one

1 minute, Your Honor.

2 THE COURT: Yes.

3 (Pause)

4 THE COURT: Oh, I forgot about you.

5 THE WITNESS: Yeah.

6 (Laughter)

7 THE COURT: You're doing a fine job.

8 I'm learning something about telephone records.

9 THE WITNESS: Oh, good.

10 THE COURT: Yes. You may step down.

11 THE WITNESS: Thank you, Your Honor.

12 (Pause)

13 THE COURT: Yes, Mr. Patterson.

14 MR. PATTERSON: Can we go to sidebar
15 briefly, Your Honor?

16 THE COURT: I'm just wondering why we
17 need to go to sidebar, but if you think it best --

18 MR. PATTERSON: I do, Judge. I --

19 MS. MEEHAN: Do you want us there or --

20 MR. PATTERSON: Yeah.

21 MS. MEEHAN: Okay.

22 (At sidebar)

23 MR. PATTERSON: I am at an impasse with
24 my client insofar as him even communicating to me now.
25 I'm going to have to have some serious conversation

1 with him with respect to whether he wishes to exercise
2 his right to remain silent or whether he wishes to
3 testify. I am hamstrung if there is no communication
4 between us and obviously I can't effectively represent
5 my client.

6 I'm asking the Court for a direction
7 insofar as a possible solution. Whether Your Honor
8 wants to colloquy him, I -- I really don't know how to
9 proceed to tell you the truth.

10 MR. ECKERT: I would only suggest, Your
11 Honor, that the issue of whether he testifies you
12 should do a personal colloquy based on the
13 representations that have been made. I believe it is
14 incumbent upon the Court -- I don't mean to use that
15 word. But we would request that the Court colloquy
16 the defendant personally as to what his ultimate
17 decision is on whether to testify and whether he can
18 -- I'll just leave it at that.

19 Thank you.

20 THE COURT: Does he want to proceed pro
21 se?

22 MR. PATTERSON: I don't think it's that
23 far yet. He has kind of shut down. He hasn't
24 expressed that I be removed from the case. He's just
25 shut down.

1 THE COURT: Well, I would address the
2 issue that you're presenting now before -- there's a
3 Third Circuit case, US versus I think it's Penny pack
4 (sic) or Penny back (sic). Are you familiar with it?

5 MR. ECKERT: Not the case, Your Honor.

6 THE COURT: It was written by a
7 colleague on the Third Circuit who was my next door
8 roommate in law school, Judge Greenberg (ph).

9 MR. WITTELS: Oh, Judge Freedberg from
10 Camden County.

11 THE COURT: Pardon me?

12 MR. WITTELS: Judge Robert Freedberg?

13 THE COURT: No. Judge Greenberg.

14 MR. WITTELS: Oh, I thought you said
15 Freedberg. I know him.

16 THE COURT: I'll take a look at the
17 case. As far as the instructions to the defendant, I
18 don't want to focus on the right to testify until --
19 all of the rights a defendant has, including the right
20 to testify. It's his choice. But what I have not had
21 before is a lawyer who reports to me during the trial
22 that the defendant has shut down, shut me out.

23 MR. PATTERSON: That's essentially what
24 it is. There's no communication anymore. And that's
25 really going to -- it's going to --

1 THE COURT: Do you need to talk to
2 (indiscernible)?

3 MR. PATTERSON: I can try. I mean,
4 I've been in these positions before, unfortunately.

5 THE COURT: Well, I think the
6 Government ought to do some homework, too, on this
7 issue.

8 MR. ECKERT: Absolutely, Your Honor.

9 MS. MARTIN: Yeah.

10 THE COURT: And -- because I am. Yeah.
11 I just haven't had it.

12 MR. ECKERT: Okay.

13 THE COURT: (Indiscernible).

14 MR. PATTERSON: Pardon me?

15 THE COURT: (Indiscernible) allow Mr.
16 Patterson some time to see him in the sheriff -- in
17 the marshal's lockup so maybe they can talk to each
18 other at some point today?

19 MR. PATTERSON: I would be totally okay
20 with that. I just want to make this official record
21 for review with respect to me proceeding effectively
22 without my client's input. I'm not asking to be
23 removed from the case, but I'm just trying to set the
24 record on the perspective of my difficulties right
25 now.

1 THE COURT: Well, why don't you think
2 about it and chat with your co-counsel, counsel for
3 the co-defendants and advise me after lunch what you
4 propose to do.

5 MR. PATTERSON: I'll do that.

6 THE COURT: But for now I have no
7 answer for the shut down in communication. Your
8 client (indiscernible) -- well, something at the very
9 first hearing that we had.

10 MR. PATTERSON: I recall.

11 THE COURT: He was satisfied and then
12 he (indiscernible). He then wrote me a letter and
13 apologized. I thought that was very insightful and I
14 think I sent it to you. But it was just a simple
15 letter apologizing for the outburst. This came early
16 in the case when you were talking about a separation.

17 MR. PATTERSON: Right. He's never
18 expressed a dissatisfaction with how I'm handling his
19 case. He just essentially shutdown generally, not so
20 much angry at me.

21 THE COURT: Well, I'm sure he's not
22 going to be overwhelmed by further evidence --

23 MR. PATTERSON: Right.

24 THE COURT: -- of the link between
25 Donnie Smith and the 911 call. But when it's all in,

1 I'm going to have to rule whether there's enough self-
2 authenticating evidence and circumstantial evidence
3 for admission of that call.

4 MR. PATTERSON: I understand.

5 THE COURT: And what we have so far is
6 -- well, a lot of telephone communications, including
7 Dontay Smith and Donnie Smith's wife --

8 MR. PATTERSON: I'm aware.

9 THE COURT: -- and between Dontay Smith
10 and Mr. Quinn, very, very, very -- at three various
11 close in time to the 911 call. I'm just preparing you
12 for what you should probably anticipate. But I'll
13 hear argument and decide.

14 All right. Is there anything else for
15 me?

16 MR. PATTERSON: No, Your Honor. Thank
17 you.

18 MR. ECKERT: No.

19 MS. MARTIN: Thank you.

20 (Sidebar concluded)

21 THE COURT: All right. I think we'll
22 recess for lunch. See you at quarter of two.

23 THE COURT OFFICER: All rise.

24 (Recess taken at 12:51 p.m.; reconvened at 2:01
25 p.m.)

1 (Jury not present)

2 THE COURT OFFICER: All rise.

3 THE COURT: Be seated, everyone.

4 Another issue has arisen and I'm going
5 to share it with you and we'll decide how to proceed.

6 A few minutes ago the senior marshal
7 reported to me that Defendant Smith has refused to
8 come back to the courtroom, number one, and he's taken
9 off his civilian clothes and put on his green
10 jumpsuit.

11 The co-defendants are or soon will be
12 in the cell block.

13 Government counsel --

14 MR. ECKERT: Yes, Your Honor.

15 THE COURT: -- how do you recommend we
16 proceed?

17 MR. ECKERT: I believe we just place
18 some sort of testimony on the record from the marshal
19 that the defendant, in fact, indicated or if -- or if
20 counsel are satisfied with the Court recounting the
21 conversation, that would be fine. But there -- as
22 long as there's some representation on the record that
23 the defendant personally himself made a choice to
24 absent himself from the proceedings, we believe that
25 we must proceed given where we are. Jeopardies

1 attached for the other two defendants. So we believe
2 that we should proceed as long as the defendant's made
3 an affirmative choice.

4 THE COURT: What about the need to
5 colloquy the defendant?

6 MR. ECKERT: So I -- if he refuses to
7 come up, Your Honor, I think that we -- that's an
8 interesting question. I think we have -- we would
9 accept testimony from the marshal that -- or somebody
10 that spoke to him and say he, in fact, refused to come
11 up. I don't know that we can make him come up and be
12 colloquied if he's not willing to come up.

13 THE COURT: We'll certainly get the
14 marshal in to report on his actual conversation with
15 the defendant.

16 Mr. Patterson.

17 MR. PATTERSON: The senior marshal
18 suggested or would make available the opportunity for
19 me to speak with him downstairs in the holding cell so
20 I can actually -- he said he -- my client told the
21 marshal he wanted to speak with me, then he said he
22 didn't want to speak with me. I think I should give
23 him one more opportunity, explain to him what will
24 happen if he doesn't come up, and then I'll be at a
25 better position to advise the Court what my next

1 request would be, which would probably be a mistrial
2 on behalf of Mr. Smith.

3 The issue is how is it explained away
4 to the jury that my client who has been here for four
5 days is no longer here, that's my issue, and what
6 impression that may have on the jury to the detriment
7 of Donnie Smith deciding not to come and finish the
8 trial.

9 THE COURT: Well, there's a question
10 whether we should declare a mistrial.

11 MR. PATTERSON: Right. And that's -- I
12 would be moving --

13 THE COURT: I haven't articulated the
14 second half of that question, or whether we should
15 proceed against the three defendants if -- assuming he
16 doesn't -- he refuses to appear.

17 MR. PATTERSON: I would just be
18 suggesting to the Court that after I do speak with him
19 I will be making a motion for a mistrial if he does
20 not come up. I just want to advise the Court.

21 THE COURT: Well, that raises the
22 question -- again, I just said it --

23 MR. PATTERSON: Right. I understand.

24 THE COURT: -- of whether we should
25 proceed with him and with the case against him --

1 MR. PATTERSON: In abstention.

2 THE COURT: -- in his absence or treat
3 it some other way, such as bifurcating and -- or
4 severing it.

5 MR. PATTERSON: And then the issue
6 would come -- would arise as to how we or Your Honor
7 would address the jury, whether it be a cautionary
8 instruction or how are they -- what instruction are
9 they given with respect to a trial that continues and
10 there's obviously a person missing.

11 And, again, I would like to place on
12 the record, this isn't a typical scenario where I
13 don't want you as my lawyer anymore at which point the
14 Court can colloquy either standby, pro se or new
15 counsel. This is just, I am not talking anymore.
16 He's never, again, expressed dissatisfaction with me
17 where he wants new counsel. That has never been
18 raised between -- in my conversation with Mr. Smith.
19 It's a whole different issue where he just does not
20 wish to communicate at all. And now that he doesn't
21 want to come to court, that just kind of is the next
22 step.

23 THE COURT: Does the Government have
24 any authority for its stated position that we should
25 tell Mr. Smith he has a right to participate in the

1 trial and that he's got some other rights as well, and
2 tell him if he doesn't we're going to continue the
3 trial against him in his absence --

4 MR. ECKERT: Your Honor --

5 THE COURT: -- authority for that?

6 MR. ECKERT: -- I was -- I don't mean
7 to interrupt. I was only made aware of this just
8 before we came. I guess what we would just put on the
9 record is that if a defendant can cause a mistrial in
10 every victim case where they testified, this could
11 happen in any case.

12 And I think that there's a serious danger
13 here that if we allow the defendant to get a mistrial
14 it just sends a message that if in the middle of trial
15 they don't like the way things are going they can
16 absence themselves. Clearly, we need to make a record
17 that that's a choice that Mr. Smith is making. But we
18 would oppose any motion for a mistrial on that basis.

19 THE COURT: No. That wasn't the
20 question --

21 MR. ECKERT: Oh, I'm sorry.

22 THE COURT: -- I asked of you. Thank
23 you for that --

24 MR. ECKERT: I'm sorry.

25 THE COURT: -- those remarks.

1 The question I asked of you, do you
2 have any authority for the proposition that we should
3 continue the trial, offer him an opportunity to
4 participate, tell him what other rights he has, and
5 tell him we're going to either participate or declare
6 a mistrial, do whatever the Government recommends.

7 Question, do you have authority for
8 that proposition?

9 MR. ECKERT: I do not, Your Honor. But
10 I would be happy -- I would ask for the opportunity to
11 make a call to our appellate folks on that. I was not
12 aware of the issue just before --

13 THE COURT: I wasn't aware of it
14 either. It surfaced, oh, about ten minutes ago. And
15 it's now ten after two on Thursday, January 30th. It
16 surfaced about 2:00.

17 All right. I think -- yes, Mr.
18 Wittels.

19 MR. WITTELS: May I make a suggestion,
20 Judge? If Mr. Patterson can go down and talk to him,
21 maybe that will work, maybe it won't. But it will
22 give us all the time to think this through and to
23 consult appellate authority.

24 THE COURT: All right.

25 Ms. Hogue, will you ask the marshal who

1 reported to me -- we're going to make a record of
2 this.

3 So I would like you to stand at the
4 lectern and identify yourself.

5 DEPUTY DRAKOWSKI: I don't know if it
6 makes a difference, Judge, but I -- I didn't speak
7 directly to the defendant. My operations deputy did.
8 And he was the one downstairs with him when he
9 refused. I can attest to that -- to what he told me
10 --

11 THE COURT: Well, I would like you
12 while you're here, since you reported it to me --

13 DEPUTY DRAKOWSKI: Right. Okay.

14 THE COURT: -- put on the record what
15 you know. We might need to hear from your deputy.

16 First, your name and then put on the
17 record what you told me in chambers at about 2 p.m. on
18 January 30th.

19 DEPUTY DRAKOWSKI: My name is Yohan
20 Drakowski (ph) , Deputy U.S. Marshal. At around 2:00
21 the defendant --

22 THE COURT: Keep your voice up.

23 DEPUTY DRAKOWSKI: -- defendant refused
24 to --

25 THE COURT: Defendant Smith?

1 DEPUTY DRAKOWSKI: -- Donnie Smith
2 refused to come up to the courtroom for his trial and
3 Judge DuBois was --

4 THE COURT: Advised.

5 DEPUTY DRAKOWSKI: -- advised.

6 THE COURT: All right. Do you wish to
7 go down and try to talk to him?

8 MR. PATTERSON: I do, Your Honor.
9 Is he down there now?

10 DEPUTY DRAKOWSKI: He is. I can --

11 MR. PATTERSON: Okay. No, I'll meet
12 him in the room down in lockup.

13 DEPUTY DRAKOWSKI: Yeah. Yeah. Yeah.

14 MR. PATTERSON: All right.

15 THE COURT: Wait a minute. Just a
16 minute.

17 (Pause)

18 THE COURT: We're talking about the
19 excusing the jury, not for the day, but I don't like
20 them cooped up in the jury room. We should have
21 gotten that idea before. Maybe it will take less
22 time. Why don't we recess -- well, I don't want to
23 recess, but as far as the jury is concerned, tell them
24 that they can get some air and be back at, I would say
25 quarter of three.

1 THE COURT OFFICER: Okay. Will do.

2 MR. PATTERSON: May I be excused, Your
3 Honor?

4 THE COURT: You may. And the goal now
5 is to go down to the cell block and talk to --

6 MR. PATTERSON: Yes.

7 THE COURT: -- talk to the defendant
8 and then report. And whenever -- counsel will be
9 here, and we certainly don't need the jury to resolve
10 this issue. But when -- as soon as you have any word,
11 I will expect you to come back.

12 MR. PATTERSON: I will, Your Honor.

13 THE COURT: In the meanwhile, the co-
14 defendants are up here?

15 THE COURT OFFICER: Yes, sir.

16 THE COURT: Should we send them down or
17 do you --

18 THE COURT OFFICER: I'll send them
19 downstairs and I'm going to make contact to -- with
20 his client in the attorney tank.

21 THE COURT: Fine. Anything else we
22 need to do now?

23 MR. WITTELS: I'm set.

24 MR. ECKERT: No, Your Honor.

25 THE COURT: I'm going to go back to the

1 (indiscernible) and see what we can come up with.

2 All right. We're in recess until a
3 quarter of three.

4 THE COURT OFFICER: All rise.

5 (Recess taken at 2:11 p.m.; reconvened at 2:41
6 p.m.)

7 (Jury not present)

8 THE COURT: Mr. Patterson, will you
9 report to the Court on your communication with the
10 defendant?

11 MR. PATTERSON: Yes, Your Honor. I met
12 with Mr. Smith down in the visiting area with the U.S.
13 Marshal on the second floor. And I discussed what his
14 intent was and he wants to proceed with trial. No
15 further issues, Your Honor.

16 THE COURT: Well, that's good because
17 the rules say a defendant who does what Mr. Smith did,
18 who refuses voluntarily to come back to the trial
19 doesn't interrupt the trial at all. The trial
20 proceeds in his absence and verdicts will be rendered
21 in the same way as if the defendant who abstended
22 himself voluntarily were present in the courtroom.

23 So we just keep going. I didn't want
24 to do that. I wanted to give the defendant an
25 opportunity to be here and to participate in his

1 defense, which I think is in his interest.

2 MR. PATTERSON: It is in your (sic)
3 interest, Your Honor, and if I could --

4 THE COURT: Not my interest.

5 MR. PATTERSON: I understand.

6 THE COURT: His -- you said it's in my
7 --

8 MR. PATTERSON: Oh, I'm sorry. It is
9 in his interest to proceed with the trial. But I
10 would just also like to further report that when I
11 initially met with him, it was just a very minor
12 misunderstanding and he told me right away he wants to
13 proceed, he wants to finish this trial.

14 THE COURT: Fine.

15 Well, I want you to thank Ms. Hull --
16 Ms. Hull, thank everyone who participated in the
17 research, the quick research we did without tech
18 people and everyone else.

19 MS. HULL: Certainly.

20 THE COURT: For their prompt response.
21 Much appreciated.

22 (Pause)

23 THE COURT: Now we'll bring the witness
24 back and continue.

25 THE CLERK: I can go get him.

1 THE COURT: Well, first we need the
2 jury.

3 MS. MARTIN: And, Your Honor, the
4 Government does intend to call the 911 custodian after
5 --

6 THE COURT: I'm sorry.

7 MS. MARTIN: The Government intends to
8 call the 911 custodian after this witness is finished,
9 if Your Honor is prepared to make a ruling on that
10 once the evidence is in.

11 THE COURT: What is the position of the
12 two interested parties on how we should proceed with
13 the 911 call? I've heard it once. But I don't
14 remember the details. I know there were certain self-
15 identifying statements in the 911 call. And as I
16 said, the admissibility of the call depends upon both
17 self-identification and circumstantial evidence.

18 How do you wish to proceed?

19 MR. PATTERSON: I believe the 911 call,
20 they would have to first identify the speaker on the
21 call as my client that obviously is an exception by --
22 a statement by a defendant.

23 So, again, my original objection is to
24 the -- whether they satisfied their burden through
25 these T-Mobile phone records as to a sufficient

1 foundation on authentication that the speaker is, in
2 fact, Mr. Smith.

3 THE COURT: Well, the phone records
4 would establish circumstantial evidence. The call
5 itself would include the self-identification. The
6 caller did not say, I don't think he said, my name is
7 Donnie Smith. If he did we wouldn't be here.

8 MR. PATTERSON: No.

9 THE COURT: But the caller said some
10 things which helped to identify him as Donnie Smith,
11 like the car description, and there were other things
12 as well.

13 MR. PATTERSON: I believe what the
14 caller had said was that he was parked in the area of
15 Scarpack (sic) Street and that somebody jumped in his
16 car and drove off.

17 THE COURT: I thought the car was
18 described.

19 MS. MARTIN: It was -- I believe it
20 says a 2010 maroon Ford Taurus.

21 THE COURT: Well, wait a minute. I
22 don't -- maybe I don't need -- is there a transcript
23 of the call? There must be.

24 MS. MARTIN: No, there's not, Your
25 Honor.

1 THE COURT: We don't have an exhibit
2 with -- well --

3 MR. PATTERSON: I believe that then
4 opens up another issue with respect to the contents of
5 the call that's going to -- if it's allowed in, it's
6 going to be left up to the jury's interpretation
7 obviously.

8 THE COURT: Absolutely. Well, what
9 we'll do -- no. I don't want to spend a lot of time
10 on this. We've kept the jury waiting and I'm sure
11 this isn't of concern to -- well, I'm not going to go
12 forward with that statement.

13 But what we're going to have to do is
14 excuse the jury again and play the call. That's what
15 I was addressing, is that necessary, and I suspect
16 that it is.

17 MR. PATTERSON: I believe so, Your
18 Honor.

19 THE COURT: I thought there was a
20 transcript, but no. So we'll put the witness back on
21 the stand, Mr. Sierra, complete his testimony and then
22 it's your -- well, you don't have to put the caller on
23 next.

24 MS. MARTIN: No, Your Honor. I don't
25 have to. I was just indicating that that was our

1 intention and I didn't know if Your Honor was prepared
2 to rule. I can ask the 911 custodian to come back
3 tomorrow if you would rather rule on it later in the
4 day.

5 THE COURT: I want to rule on it out of
6 the presence of the jury.

7 MS. MARTIN: Of course.

8 THE COURT: I don't want to take any
9 additional time, and it will take additional time to
10 resolve this issue. And what I'm suggesting is we
11 finish with Mr. Sierra. We're going to excuse the
12 jury at the rate we're going now. It's quarter of
13 three. We have two more hours. I would like to get
14 two more hours of testimony and not argument.

15 So my thought is that we ought to keep
16 the 911 operator here and proceed with her. We've got
17 a lot to accomplish tonight. But proceed with her
18 first at 5:00. Hear the call out of the presence of
19 the jury and then decide. Hear argument again and
20 decide, again, out of the presence of the jury, but
21 they'll be on their way home.

22 MS. MARTIN: And just so I'm my -- just
23 to clarify, do you want the 911 custodian here to
24 testify as -- that it's a business record or you just
25 want to hear the phone call again?

1 THE COURT: Well, I think in -- I would
2 turn to you, Mr. Patterson.

3 MR. PATTERSON: If the 911 -- I
4 understand that the 911 center person would testify
5 that it is, in fact, a business record. Then the
6 other issue obviously is the identification of the
7 caller as my client. I think that's where I would
8 make the objection --

9 THE COURT: I'm primarily interested
10 in, now at least, in hearing the call again.

11 MR. PATTERSON: Oh, yes --

12 THE COURT: That --

13 MR. PATTERSON: -- outside the presence
14 --

15 THE COURT: -- will enable me to rule
16 and --

17 MR. PATTERSON: I think the Government
18 has other police officer fact witnesses that we can --

19 THE COURT: Oh, I'm not concerned about
20 that. The Government will --

21 MR. PATTERSON: I'm just saying --

22 THE COURT: -- call other witnesses.
23 But Ms. Martin just asked do we want the 911 operator
24 here at 5:00 to give testimony or is the call alone
25 sufficient. I'm not talking only about what is

1 necessary in order for me to rule on the admissibility
2 of the 911 call --

3 MR. PATTERSON: I would ask for
4 testimony --

5 THE COURT: -- Exhibit 5-B.

6 MR. PATTERSON: I'm sorry to interrupt.
7 I would ask for testimony from the representative from
8 the 911 center.

9 THE COURT: All right. We'll hear her
10 testimony out of the presence of the jury at or about
11 5:00.

12 MS. MARTIN: All right. Thank you,
13 Your Honor.

14 THE COURT: Well, someone's got to do
15 something like get Mr. Sierra back on the stand.

16 MR. ECKERT: He's here, Your Honor.

17 THE COURT: I'm sorry to have missed
18 you, Mr. Sierra. My attention was focused on counsel
19 who presented, as you gather --

20 THE WITNESS: Yes, sir.

21 THE COURT: -- many, many, many legal
22 issues that are not common for presentation in
23 criminal cases.

24 All right. You may continue. Were we
25 on cross-examination?

1 THE COURT OFFICER: All rise.

2 (Jury present)

3 THE COURT: Be seated, everyone.

4 The legal issue that was presented
5 before lunch has been partially resolved, but not
6 completely resolved. We're going to finish it
7 tonight. We'll be here long after you're on your way
8 home. We're going to send you home at the usual time,
9 and I'll have more to say about scheduling at that
10 time.

11 And now we will proceed.

12 Cross-examination.

13 MR. PATTERSON: Oh, go ahead.

14 MS. MEEHAN: Go ahead. Go ahead.

15 MR. PATTERSON: I'm sorry. No. Please
16 go.

17 CROSS-EXAMINATION

18 BY MS. MEEHAN:

19 Q. Good afternoon, Mr. Sierra.

20 A. Good afternoon.

21 Q. I just have a few quick questions for you.

22 MS. MEEHAN: If I could ask the
23 Government to post what's already been marked and
24 admitted as Government 47-B, and that's going to pop
25 up on your screen there. And can that also be shown

1 to the jury as well, Your Honor? It's already been
2 admitted.

3 Thank you.

4 BY MS. MEEHAN:

5 Q. Mr. Sierra, you -- you've got some
6 familiarity with telephone number 215-713-5602 on your
7 direct exam.

8 A. Yes.

9 Q. And it was established that that number
10 belongs to my client here, Mr. Quinn. And the records
11 begin -- the records that you have here of G-47 start
12 on the date of March 20th of 2019, right?

13 A. Correct.

14 Q. And they end, and there's 20, 21 pages, and
15 they end April 12th, right?

16 A. April 15th.

17 Q. Oh, I'm sorry. April 15th. So the very
18 first call either way, with the number 215-713-5602 is
19 on March 20th, correct?

20 A. Just one moment.

21 (Pause)

22 Q. Around 3:00 and that's on page 2, sorry, on
23 -- like a quarter of the way down.

24 A. Yes. I have 3/20/2019 at 0304.

25 Q. Okay. And I know this is difficult, but if

1 you could just scan through page 3 and then 4, I think
2 there's another call that day. It's a quarter of the
3 way -- it's at 171749 on page 4.

4 A. Yes.

5 Q. Okay. All right. And then that -- page 4
6 continues. That's still the same date of March 20th
7 and then page 5, if you can just pull up page 5,
8 that's a combination of March 20th and 21, and you
9 don't see any calls on March 21. And on page 6, if
10 you could scan through that and just see if there's a
11 call from that -- if that number is there on March
12 21st. And let me know. Take your time. I'm sorry.

13 (Pause)

14 A. I do not see the number on page 6.

15 Q. Okay. And page 7 and I'm pretty confident
16 you won't see it on March 21st on page 7.

17 A. Nothing on page 7.

18 Q. And again on page 8, same date. You're
19 still on March 21st.

20 A. Nothing on page 8.

21 Q. Same with page 9. Nothing on page 9.

22 A. And turning your attention to page -- sorry.
23 Let's jump ahead here. I don't think there's anything
24 on page 10, but you can go ahead and scan that if you
25 would.

1 A. Nothing on page 10.

2 Q. And then on page 11, if you can call up page
3 11, we -- it sort of just, almost half, a little more
4 than halfway down the page we get to March 22nd which
5 is the date of the incident that was referenced on
6 direct. And if you'll go through March 22nd on page
7 11 and 12 and 13, there's no call from the number or
8 to the number 215-713-5602 until, now I'm on page 14,
9 if you can call up 14, until 194213, so that would be
10 -- I think you've already advised us that's 5:42 in
11 the evening, correct? And take your time. I don't
12 mean to rush you. I apologize.

13 A. So the next transaction I see is on
14 3/22/2019 at 194213.

15 Q. So there was no call on -- so really before
16 that time the last call was -- with that -- that
17 included that number was on the 20th?

18 A. That is correct.

19 Q. Okay. Thank you.

20 MS. MEEHAN: I have nothing further.

21 And, Your Honor, I do have a
22 stipulation to add, but I would -- I could ask the
23 Court if I could read that to the jurors after Mr.
24 Patterson's cross-examination, whichever Your Honor
25 prefers.

1 THE COURT: Fine.

2 MS. MEEHAN: Thank you.

3 CROSS-EXAMINATION

4 BY MR. PATTERSON:

5 Q. Good afternoon. How you doing?

6 A. Good afternoon, sir.

7 Q. So before the lunch break you had answered
8 questions by the Government and displayed on the
9 screen both in front of you and in front of the jurors
10 that you explained a lot of data entry; is that
11 correct?

12 A. Correct, sir.

13 Q. And that's all they are are data entries,
14 correct?

15 A. Correct.

16 Q. You can't testify that those data entries on
17 the day if somebody called and the day that somebody
18 received a call that Donnie Smith made any of those
19 calls, correct?

20 A. I don't know who that is.

21 Q. You can't say that -- well, let me ask you.
22 You can't say who made the call, correct?

23 A. No, only that the handset had the
24 communication.

25 Q. And so let's get more specific because you

1 wouldn't know my client. Those calls that you were
2 referencing was to a subscriber as Dontay Smith; is
3 that correct?

4 A. Correct, sir.

5 Q. Okay. And I believe you said that Dontay
6 Smith, that particular account was not a contractual
7 account so you could put any name in there; is that
8 right?

9 A. Correct, sir.

10 Q. So if you want to conceal your identity you
11 can change the last three letters of your name from
12 Donnie Smith to Dontay Smith, correct?

13 A. If you wanted to, yes.

14 Q. You could make it that close. You could put
15 Santa Claus or Yosemite Sam, right?

16 A. Correct, sir.

17 Q. And I bet you've seen that, haven't you?

18 A. Yes, I have.

19 (Laughter)

20 Q. So people who would put Santa Claus and Bugs
21 Bunny, obvious they have grave concerns about somebody
22 snooping into their account, correct?

23 A. People sometimes do it for comedic reasons.
24 I've seen alter egos to super heroes, Bruce Wayne,
25 Bruce Banner. Whatever makes them happy.

1 (Laughter)

2 Q. Okay. And T-Mobile is a vast, large
3 company, correct?

4 A. Yes.

5 Q. Millions of subscribers?

6 A. Yes.

7 Q. Millions or quadrillions or quadrillions of
8 data, correct?

9 A. Yes.

10 Q. And somewhere in some place in some town in
11 the United States there is a room, a very cold air-
12 conditioned room with a big computer in it. There's
13 probably a lot of those rooms with big computers; is
14 that correct?

15 A. Yes, sir.

16 Q. And that computer, one computer or a big, a
17 whole bunch of different computers?

18 A. Many different servers, but, yes, large air-
19 conditioned rooms.

20 Q. Right. T-Mobile obviously has an IT
21 department, correct?

22 A. Yes, sir.

23 Q. And I -- to this day I don't know what the
24 IT stands for. What's IT stand for?

25 A. Information technology.

1 Q. Okay. So information technology is
2 obviously somebody who is probably very smart with
3 computers and they are taking care of these very
4 complex machines; is that correct?

5 A. Yes, sir.

6 Q. Are you one of the people that are taking
7 care of these very massive, complex machines?

8 A. No, sir, I am not.

9 Q. You are actually the person responsible for
10 interpreting what these big massive machines spit out
11 once you put in a request; is that correct?

12 A. That is correct.

13 Q. So you would be, at least be familiar with
14 the terminology of garbage in, garbage out?

15 A. Yes, sir.

16 Q. You put garbage into a computer, it doesn't
17 matter how smart the computer is, if the garbage in is
18 not -- is garbage, the information out is going to be
19 garbage; is that correct?

20 A. That is correct, sir.

21 Q. You can't say with one-hundred percent
22 certainty today that all that information contained in
23 all those documents provided to the jury and that you
24 explained on direct examination by the Government,
25 that that is one hundred percent accurate?

1 A. Well, that's why there's redundancies. So
2 as -- I would never say impossible. But the
3 information being inaccurate is as close to impossible
4 as I feel comfortable saying impossible.

5 Q. Okay. So we do at least have close to
6 impossible, correct?

7 A. Yes.

8 Q. Okay. And would you be in the position to
9 testify, would you be -- and the word competent means
10 competent in the scenario of a person testifying at a
11 jury trial, competent meaning would you be competent
12 to say that it's near impossible or would we near an
13 IT guy that's sitting there with these computers every
14 day, making sure that they're working within the
15 established parameters of what that computer is
16 supposed to be operating?

17 A. Yes. I would be competent enough to provide
18 that.

19 Q. Okay. And I don't know this question.
20 That's why I'm asking. You generate phone numbers,
21 people who were calling and people who were
22 potentially receiving. You're not permitted to record
23 the actual voice, the topic of the conversation that's
24 -- that these people are engaged in; is that correct?

25 A. That's correct. T-Mobile does not retain

1 content of phone calls or text messages.

2 Q. And how about the -- oh, and text messages,
3 too, correct?

4 A. Correct, sir.

5 Q. So those massive computers in the ice cold
6 rooms, they're not calculate -- they're not storing
7 this information, correct?

8 A. No. It's just sent and delete, essentially.
9 And then the billing information which is what we have
10 here to confirm, you know, date, time, number, et
11 cetera, that information is what is retained, the
12 transactional logs because obviously we have to
13 provide bills to our customers and our -- are able to
14 be audited by outside agencies.

15 Q. Okay.

16 MR. PATTERSON: Nothing further. Thank
17 you.

18 THE WITNESS: Thank you.

19 MR. WITTELS: No questions.

20 THE COURT: Ms. Meehan?

21 MS. MEEHAN: No, Your Honor. Thank
22 you.

23 THE COURT: That concludes --

24 MS. MEEHAN: Oh, I'm sorry. Your
25 Honor, I do --

1 THE COURT: I'm sorry.

2 MS. MEEHAN: I apologize. I spoke to
3 soon. I did have a stipulation I wish to enter into
4 the record. I apologize.

5 THE COURT: And do you want to do it --
6 well, first of all, is there any redirect?

7 MS. MARTIN: No, Your Honor.

8 THE COURT: Do you wish to read the
9 stipulation into the record as part of your cross-
10 examination or can the witness be excused for it?

11 MS. MEEHAN: The witness may be
12 excused, Your Honor.

13 THE WITNESS: Yay.

14 MS. MEEHAN: Thank you.

15 THE WITNESS: I'm just waiting on you,
16 Your Honor, for you to say it.

17 THE COURT: You've had some experience
18 in court, haven't you?

19 THE WITNESS: Yes, sir.

20 (Laughter)

21 THE COURT: Good. You're excused.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Thank you very much.

24 MS. MEEHAN: Thank you, Your Honor.

25 THE COURT: This is a stipulation

1 between all counsel?

2 MS. MEEHAN: Yes, Your Honor.

3 Your Honor, there's a stipulation by
4 and between the Government and counsel for Defendant
5 Quinn, Defendant Stevens and Defendant Smith that the
6 Government did not present the entirety of the phone
7 records between -- the entirety of the phone records
8 from February 16th, 2019 through March 27th, 2019.
9 Had the Government presented those records, they would
10 show semi-regular contact between Mr. Quinn and Mr.
11 Smith. And that is the stipulation.

12 MS. MARTIN: So stipulated, Your Honor.

13 THE COURT: Thank you.

14 MR. ECKERT: May we proceed with our
15 next witness, Your Honor?

16 THE COURT: Yes.

17 MR. ECKERT: The Government calls
18 Detective Xhelo.

19 MR. WITTELS: May we see you just
20 briefly, Judge?

21 THE COURT: Pardon me.

22 MR. WITTELS: May we see you just
23 briefly, a request to the Court?

24 THE COURT: Yes.

25 (At sidebar)

1 MR. WITTELS: Would you tell the jury
2 now that that -- that this testimony about the phone
3 records has nothing to do with my client, it pertains
4 only to Quinn and Smith.

5 MR. ECKERT: Why would that come from
6 the Court? I -- you could have cross-examined him on
7 that. You can argue that. That's all fair argument.
8 But why would it need to come from the Court?

9 THE COURT: Well, it's perfectly
10 obvious it only deals with Quinn and Smith. I --
11 they're the only two people who were mentioned.

12 MR. WITTELS: Okay.

13 THE COURT: Well, I think the
14 Government's position is correct.

15 MR. WITTELS: All right.

16 (Sidebar concluded)

17 MS. MARTIN: Your Honor, permission to
18 retrieve the exhibits for the next witness?

19 THE COURT: You may.

20 MS. MARTIN: Thank you.

21 (Pause)

22 THE CLERK: Please raise your right
23 hand.

24 DETECTIVE TAULANT XHELO, GOVERNMENT'S WITNESS, SWORN

25 THE CLERK: Thank you. Please be

1 seated.

2 Please state your full name for the
3 record.

4 THE WITNESS: Detective Xhelo,
5 X-H-E-L-O.

6 MR. ECKERT: And can you state your
7 first name, too, please, sir?

8 THE WITNESS: Taulant. T-A-U-L-A-N-T.

9 DIRECT EXAMINATION

10 BY MR. ECKERT:

11 Q. How are you currently employed?

12 A. I'm a Philadelphia police detective.

13 Q. Okay. And how long have you been a
14 detective?

15 A. Since December 4th, 2019.

16 Q. Okay. And what did you do before that?
17 What position did you hold?

18 A. I was a patrolman, police officer.

19 Q. Okay. And how long did you serve in that
20 capacity?

21 A. For about five years.

22 Q. Okay. What district were you assigned to?

23 A. The 14th.

24 Q. And that was in the entire five years?

25 A. I was assigned to the 25th for six months --

1 Q. Okay.

2 A. -- and then transferred to the 14th.

3 Q. Okay. And were you serving in that capacity
4 on March the 22nd of 2019?

5 A. I was.

6 Q. And were you working alone that day or with
7 a partner?

8 A. With a partner.

9 Q. What type of vehicle were you in?

10 A. Ford Explorer SUV.

11 Q. Okay. Are there lights and sirens affixed
12 to that vehicle?

13 A. Yes.

14 Q. Okay. Were you the driver or the recorder?

15 A. I was the driver.

16 Q. Okay. Did you receive a call for service to
17 152 East Sharpnack Street around 5 p.m.?

18 A. Yes, I did.

19 Q. And did you respond to that call?

20 A. Yes, I did.

21 Q. What was the nature of that call?

22 A. It was a robbery in progress.

23 Q. Okay. Is that a priority call?

24 A. Yes.

25 Q. Explain to the ladies and gentlemen of the

1 jury what a priority call is.

2 A. A priority call is an emergency call where
3 we have to respond right away with lights and sirens.

4 Q. Okay. Now what street did you ride down
5 when you were responding to that call for service?

6 A. Sharpnack Street.

7 Q. Are you familiar with this area, sir?

8 A. Yes, I am.

9 Q. Okay. And that's through your time as a
10 patrolman or patrol officer in the 14th?

11 A. Yes.

12 Q. All right. What do you observe as you
13 proceed down Sharpnack to the location?

14 A. I observe a maroon car parked on Sharpnack
15 and also other vehicles that were already parked on
16 the street that had responded to the location before I
17 got there.

18 Q. Okay. And were -- did you later receive a
19 report of a vehicle you should be on the lookout for?

20 A. Yes, through police radio. Real Time Crime
21 notified us via police radio that a male possibly
22 involved in a robbery walked into a dark color vehicle
23 parked on Sharpnack.

24 Q. Okay. And when you drove down Sharpnack to
25 the intersection of -- or where 152 Sharpnack is

1 located, what did you observe?

2 A. That was the intersection of Sharpnack and
3 Rolls and I observed the vehicle and I also observed
4 Officer Ferreira go up to the vehicle, to the driver's
5 side of the vehicle.

6 Q. And what did you observe happen with Officer
7 Ferreira at the driver's side of the vehicle?

8 A. I observed him open the door and try to take
9 the male out of the car and it appeared that a
10 struggle was going on between Officer Ferreira and
11 whoever was in the car.

12 Q. Okay. Did you get out of the car at that
13 point?

14 A. No, I didn't. I didn't get a chance to get
15 out of the car because the car pulled -- drove off.

16 Q. Okay. And after the car drove off what did
17 you do?

18 A. I followed the car.

19 Q. Okay. Where did you follow the car to?

20 A. The car drove westbound on Sharpnack so I
21 started following westbound on Sharpnack after the
22 car.

23 Q. Okay. If you look at your screen there,
24 there should be a map that's marked as Government's 3-

25 A. Okay. Does that map fairly and accurately

1 represent that area as you've come to know it through
2 your service in the 14th district?

3 A. Yes.

4 Q. Okay. Okay.

5 MR. ECKERT: Officer, if you could go
6 to 3-B, please.

7 BY MR. ECKERT:

8 Q. Just hang on for one second, sir.

9 A. Sure.

10 Q. All right. Now, also, what should be up on
11 the screen is 3 Bravo or 3-B, and that's just a zoomed
12 out map of that same area. Does that fairly and
13 accurately represent the area as you've come to know
14 it through your service as a police officer?

15 A. Yes.

16 Q. Okay.

17 MR. ECKERT: Your Honor, at this time
18 we move 3-B. 3-A has been previously admitted.

19 THE COURT: Yeah. Is there any
20 objection?

21 MR. PATTERSON: No, Your Honor.

22 THE COURT: 3-B is received.

23 (Government's Exhibit No. 3-B is received)

24 MR. ECKERT: Okay. Free to publish it
25 to the jury, please.

1 BY MR. ECKERT:

2 Q. Okay. Sir, if you would, take us through
3 the -- your route of travel after you follow the car
4 that you were on the lookout for. Where did it go?

5 A. So from Sharpnack -- could you show us the
6 other --

7 Q. Oh, I'm sorry.

8 MR. ECKERT: Go back to 3-A.

9 THE WITNESS: All right. So from
10 Sharpnack we were driving towards Germantown Ave. The
11 vehicle made a right-hand turn on Germantown Ave. and
12 then a quick turn on West Hoarder and went all the way
13 down to Hoarder and I would say Hagan. That's where
14 we lose sight of the car.

15 MR. ECKERT: Okay.

16 BY MR. ECKERT:

17 Q. Now how long did it take -- would it take
18 you to drive from Ross and Sharpnack to the crash
19 site.

20 A. That day or usually when --

21 Q. No, usually. Generally first.

22 A. Five minutes.

23 Q. Okay. And how long would it have taken on
24 that day?

25 A. Two or three minutes.

1 Q. Okay. Now when you were following after
2 this car, were you trying to be right behind it?

3 A. I was trying to have visual on the vehicle.
4 I was trying to see where it would go so I could give
5 information on -- through a radio, police radio --

6 Q. Okay.

7 A. -- and follow the car at a safe distance.

8 Q. And were you able to observe that vehicle?

9 A. I was after the vehicle for a good maybe two
10 minutes until he went towards Hagan Avenue. That's
11 where I lose sight of the vehicle.

12 Q. Okay. And what happened after you lost
13 sight of the vehicle?

14 A. We made a left turn on West Hagan, and then
15 we made a right turn on Upsal Street and that's where
16 we were flagged down by other drivers who let us know
17 that a crash just occurred on Park Line Ave.

18 Q. Okay. And did you respond to the crash?

19 A. Yes, I did.

20 Q. And what did you see at the crash site?

21 A. I saw the same vehicle that I was following
22 crashed near the woods.

23 Q. Okay.

24 MR. ECKERT: If I could have 26-A just
25 to the witness, please. Thank you.

1 BY MR. ECKERT:

2 Q. All right. You see that, what photograph
3 has been marked as 26-A, sir?

4 A. Yes, I do.

5 Q. Does that fairly and accurately represent
6 the condition of the vehicle?

7 A. Yes, sir.

8 Q. Okay.

9 MR. ECKERT: Publish it, please.

10 THE COURT: You may publish.

11 MR. ECKERT: Thank you. That's
12 previously been admitted.

13 Thank you.

14 BY MR. ECKERT:

15 Q. Now did you and your partner actually
16 physically get out of your car and approach that
17 vehicle?

18 A. Yes, we did.

19 Q. Okay. What happened at that point?

20 A. My partner opened the door to see if anybody
21 was inside the car and there was no one in the car.

22 Q. Okay. Now what did you and your partner do
23 once you confirmed there was no one inside the car?

24 A. We called for a backup unit to stay with the
25 car and -- so we could go into the wooded area and

1 check to see if there was anybody in there.

2 Q. Okay. And did backup eventually arrive?

3 A. Yes.

4 Q. How long did that take?

5 A. About ten minutes.

6 Q. Okay. And what happened once backup
7 arrived? What did you and your partner do?

8 A. We started to walk through the trails to see
9 if we could find the driver.

10 Q. Describe for the ladies and gentlemen of the
11 jury what is that, when you say the wooded area, what
12 does that mean?

13 A. It was like a park. It's a park where
14 people walk their dogs and run, go for a jog.

15 Q. Okay. And you and your partner -- who was
16 your partner, by the way?

17 A. Officer Fernandez.

18 Q. Okay. You and Officer Fernandez, you
19 canvassed the area?

20 A. Yes.

21 Q. Okay. How long did you do that for?

22 A. For about 30 minutes, 35 minutes.

23 Q. Okay. Were you ever able to locate anyone
24 matching the description of the suspect?

25 A. No.

1 Q. Okay. All right. Did you later respond to
2 the store at 152 East Sharpnack?

3 A. Yes. After we surveyed the area, we went
4 back to our vehicle which was where the car was
5 crashed, and then we drove back to Ross and Sharpnack.

6 Q. Okay.

7 MR. ECKERT: Your Honor, may I have one
8 moment to consult with counsel?

9 THE COURT: Yes.

10 MR. ECKERT: Thank you.

11 At this time I would just like to play
12 Exhibit 2-C to the jury if that's fine.

13 BY MR. ECKERT:

14 Q. Would you just observe that video, please,
15 on your screen, sir?

16 (Pause)

17 MR. ECKERT: You can go ahead and stop
18 it right there.

19 Thank you.

20 BY MR. ECKERT:

21 Q. Sir, that SUV, that marked SUV police
22 vehicle that pulled up, was that your vehicle?

23 A. That's the vehicle I was driving, yes.

24 Q. Thank you.

25 MR. ECKERT: No further questions for

1 the witness.

2 THE COURT: You may cross-examine.

3 MR. PATTERSON: No questions for this
4 witness, Your Honor.

5 Mr. Wittels.

6 THE COURT: Briefly.

7 CROSS-EXAMINATION

8 BY MR. WITTELS:

9 Q. Office -- Detective, I'm sorry, when you got
10 a call, robbery in progress, who does that come from?

11 A. Police radio.

12 Q. Police radio, which they would have gotten
13 information from the 911 call center, correct?

14 A. Yes.

15 Q. So it would have gotten information from
16 someone at some location about some problem?

17 A. Yes, from complainant, from whoever called.

18 Q. And that's usually a civilian?

19 A. Yes.

20 Q. Okay. So a civilian to the 911 operator to
21 the police radio to you?

22 A. Yes, sir.

23 Q. Doesn't mean -- the term robbery in progress
24 doesn't mean that a robbery actually occurred. That
25 means that's what's transmitted to you, correct?

1 A. Robbery in progress means that there is a
2 robbery occurring. That's what we get it as. I'm not
3 --

4 Q. That doesn't mean that there's actually a
5 robbery in progress, does it?

6 A. That -- I can't answer that. I do not --
7 when we get a call, we get a call for a robbery in
8 progress, that -- to me that means it's a priority
9 which means that I have to turn my lights and sirens
10 on.

11 Q. And that's based on what police radio tells
12 you --

13 A. Yes.

14 Q. -- which they got from the 911 call
15 operator, correct?

16 A. Yes.

17 Q. Thank you.

18 THE COURT: Ms. Meehan?

19 MS. MEEHAN: No questions, Your Honor.

20 THE COURT: There's no redirect?

21 MR. ECKERT: No, Your Honor. Thank
22 you.

23 THE COURT: That concludes your
24 testimony. Thank you --

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: -- very much.

2 MS. MARTIN: May I, Your Honor?

3 THE COURT: You may.

4 MS. MARTIN: The Government calls
5 Officer Alexander Wilson.

6 (Pause)

7 THE CLERK: Please raise your right
8 hand.

9 OFFICER ALEXANDER WILSON, GOVERNMENT'S WITNESS, SWORN

10 THE CLERK: Thank you. Please be
11 seated.

12 Please state your full name for the
13 record.

14 THE WITNESS: Alexander Wilson.

15 THE COURT: Good afternoon, sir.

16 THE WITNESS: How you doing, sir?

17 THE COURT: Fine.

18 MS. MARTIN: May I proceed, Your Honor?

19 THE COURT: Yes.

20 DIRECT EXAMINATION

21 BY MS. MARTIN:

22 Q. Good afternoon, Officer Wilson.

23 A. Good afternoon.

24 Q. Officer Wilson, how are you currently
25 employed?

1 A. Philadelphia Police Department.

2 Q. How long have you been a Philadelphia police
3 officer?

4 A. 24 years.

5 Q. And during those 24 year where have you been
6 assigned?

7 A. The 14th District.

8 Q. Okay. And were you working on March 22nd,
9 2019 as a Philadelphia police officer?

10 A. Yes.

11 Q. All right. And what were your work hours
12 that day?

13 A. 2:30 in the afternoon to 10:30 at night.

14 Q. Were you working alone or with a partner?

15 A. No. I was working by myself.

16 Q. At a certain point that day did you receive
17 a radio call for a robbery in progress?

18 A. Yes. I responded to a radio call for a
19 robbery in progress.

20 Q. Was that at 152 East Sharpnack Street?

21 A. Yes. That's correct.

22 Q. Did you respond to that call?

23 A. Yes, I did.

24 Q. Did you make it to the location?

25 A. I didn't make it to the location. At the

1 time, as I was on my way to the location two other
2 officers through police radio came on air that what --
3 that had responded also, stated that they was pursuing
4 a vehicle that was in reference to the robbery that
5 happened at 152 West -- East Sharpnack and they was
6 traveling westbound on Hoarder. At that time prior to
7 going there I directed my attention to go after the --
8 well, not go after the officer, but go follow -- catch
9 up with the officers as they was in pursuit of a
10 vehicle.

11 Q. Okay. Did you participate in the pursuit in
12 any way?

13 A. Yes, I participated into it, but I was
14 trying to catch up to them as far as the pursuit.

15 Q. Did you ultimately respond to the crash
16 site?

17 A. Yes, I did.

18 Q. Okay. And would you recognize a photo of
19 that car if I showed it to you?

20 A. Yes.

21 MS. MARTIN: If I could please have the
22 witness shown 26-A and published.

23 (Pause)

24 THE WITNESS: Yes. That's the vehicle.

25 MS. MARTIN: Thank you, Officer Wilson.

1 BY MS. MARTIN:

2 Q. Officer Wilson, what was your role at this
3 scene?

4 A. At that scene I held the vehicle as far as
5 part of the robbery that happened --

6 MS. MEEHAN: Objection.

7 THE COURT: I'm sorry.

8 MS. MEEHAN: Objection.

9 MS. MARTIN: Your Honor, I -- we can
10 strike that from the testimony. I -- he's simply
11 responding as to why he was holding the vehicle. It
12 was related to an investigation that was in progress.
13 It's a robbery investigation.

14 MS. MEEHAN: Well, he said the robbery
15 in progress and that is a central issue in the case,
16 Your Honor. I thought the Court earlier cautioned the
17 jury that it's not for the truth of the matter
18 asserted, but -- so I objected to hearsay.

19 THE COURT: Well, it was reported to
20 him as a robbery in progress. Whether it was a
21 robbery in progress is up to you to decide, ladies and
22 gentlemen.

23 Is that the instruction you were
24 requesting?

25 MS. MEEHAN: Yes, Your Honor. Thank

1 you.

2 BY MS. MARTIN:

3 Q. Officer Wilson, you said that you held the
4 vehicle. What does that mean?

5 A. Holding the vehicle as part of an
6 investigation of anything that happened or any
7 information that's given out. Hold the scene till the
8 detectives come and detectives will determine as far
9 as where we go from there, what's going to happen from
10 there.

11 Q. All right. And did you search the vehicle
12 or anything like that?

13 A. No, I didn't search the vehicle.

14 Q. Did you wait for detectives to arrive?

15 A. Yes. Our job is to wait till detectives get
16 on location.

17 Q. Did you fill out any paperwork related to
18 this vehicle?

19 A. Yes, I did.

20 Q. Okay. And did that paperwork include the
21 tag information and VIN number?

22 A. Yes, it does.

23 Q. Officer Wilson, do you know the VIN number
24 off the top of your head?

25 A. No. I can't remember the VIN number off the

1 top of my head.

2 Q. Would it refresh your recollection if I
3 showed you some paperwork that you filled out?

4 A. Yes.

5 MS. MARTIN: If I could please on the
6 witness's screen only have Government's Exhibit 12
7 displayed.

8 THE WITNESS: Yes. That's my paperwork
9 that I filled out for the vehicle.

10 BY MS. MARTIN:

11 Q. Let's start with the basics, Officer Wilson.
12 Do -- what was the make, model and year of the
13 vehicle?

14 A. 2010 Ford Taurus, burgundy in color.

15 Q. And did you note the VIN number?

16 A. Yeah. I wrote the VIN number on the
17 property receipt.

18 Q. And can you read the VIN number into the
19 record, please?

20 A. Okay. It's 1FAHP2EW9AG170167.

21 Q. And how did you determine the VIN number?

22 A. Prior to getting the VIN number the tag that
23 was on the vehicle, which was a New Jersey temporary
24 tag, my job was to run the vehicle to try to get the
25 owner's information. As I ran the New Jersey, it was

1 a paper tag, temporary tag on there and I could get
2 nothing from Pennsylvania BMV or New Jersey BMV. At
3 that time I walked to the vehicle, which is a -- the
4 VIN number plate which is on the left side front of
5 the window shield, the vehicle where you can see it
6 right there, took that down, wrote it down, went back
7 to my vehicle. At that time I entered that VIN number
8 that I just read into the system, checked both
9 Pennsylvania and New Jersey, also, and at that time
10 the tag that came up was from Pennsylvania. At that
11 time that's what I wrote on the property receipt. The
12 tag that was originally assigned to the vehicle and
13 the owner that the tag came to the vehicle. So the
14 tag and the VIN number had matched through
15 Pennsylvania BMV, Board of Motor Vehicle code --
16 system.

17 Q. Okay. And did you or brother or sister
18 officers arrange for this vehicle to be towed to a
19 Philadelphia police lot?

20 A. Yes. I made arrangements to be towed to
21 the, what we call McAllister and Whitaker, to there.

22 Q. And did you stay with the vehicle until it
23 was towed?

24 A. Yes. I stayed until it was towed.

25 Q. Thank you.

1 MS. MARTIN: Nothing further, Your
2 Honor.

3 THE COURT: Any cross-examine?

4 CROSS-EXAMINATION

5 BY MR. PATTERSON:

6 Q. Good afternoon, Officer.

7 A. Good afternoon.

8 Q. That document that was up for your direct
9 and it's up again, could you please look at that
10 report and tell us who you noted as the owner of the
11 car?

12 A. Christina D. Tarziene (ph), I believe. I
13 don't have my glasses.

14 Q. That's fine. You want my dollar ones?

15 (Laughter)

16 A. That would probably work.

17 Q. So it's not Donnie Smith, though, correct?

18 A. No, it's not Donnie Smith.

19 Q. Now were you first on scene to this
20 accident?

21 A. No. I wasn't the first one on scene, but I
22 was down there also.

23 Q. Okay. And you testified that I believe it
24 was your job to secure the scene?

25 A. Yes. I secured the vehicle.

1 Q. And, Officer, you've been on the force for
2 quite a number of years, 24, correct?

3 A. Yes.

4 Q. This isn't your first rodeo. You've been to
5 a crash scene and you know what to do, correct?

6 A. Yes.

7 Q. And you did it in this case, correct?

8 A. That's correct.

9 Q. And by doing what you did in this case, what
10 you -- the purpose of this is to make sure that
11 whatever evidence they find inside the car or outside
12 the car is not disturbed, correct?

13 A. That's correct.

14 Q. Because, actually, what you do as the first
15 responder or somebody, you know, the first, second,
16 third, fourth person and you have to make sure nobody
17 goes around the car, that's essentially the start of
18 the chain of custody, correct?

19 A. Yes.

20 Q. Because any potential evidence that they
21 would find in that car, and if I'm wrong just tell me,
22 it's typically -- first of all, it would be initially
23 observed by an officer, by their (indiscernible),
24 correct?

25 A. That's correct.

1 Q. And then they would maybe do it themselves
2 or they would call in a special unit depending on the
3 -- what you're investigating, and then the potential
4 evidence inside or outside the car would be
5 photographed, correct?

6 A. That's correct.

7 Q. And after it's photographed -- and it would
8 be photographed in the position as they found it when
9 they came on scene, correct?

10 A. That's correct.

11 Q. They wouldn't manipulate it at all because
12 that would then effect the chain of custody, correct?

13 A. That's correct.

14 Q. You want the evidence that they find in the
15 car -- and let's say -- instead of me talking about
16 generalizations, let's talk about this case.

17 You want it preserved so whatever's in there
18 can potentially be tested, correct?

19 A. That's correct.

20 Q. If it's controlled substance that would then
21 be observed by somebody initially and would then be
22 photographed, then it would be-- I believe the
23 verbiage is bagged and tagged, right?

24 A. Yes.

25 Q. Bagged and tagged means when they would take

1 the object that might be a part of a crime, they would
2 use gloves so they don't put their own fingerprints on
3 it, correct?

4 A. That's correct.

5 Q. And they would not transfer their own DNA on
6 it, correct?

7 A. Right.

8 Q. And they would put it in a bag and they
9 would seal that bag, and the only person who could
10 open that bag once it's sealed is a lab, right?

11 A. I believe so.

12 Q. Okay. And were you involved -- the scope of
13 your involvement in this case was what you just
14 testified to, correct?

15 A. That's correct.

16 Q. Were you responsible for any bagging and
17 tagging of any items found within the car?

18 A. No.

19 Q. Okay. Thank you.

20 MR. PATTERSON: Thank you.

21 THE COURT: Any further cross-
22 examination?

23 MR. WITTELS: No questions.

24 MS. MEEHAN: No questions, Your Honor.

25 THE COURT: That concludes your

1 testimony, Officer Wilson. Thank you.

2 THE WITNESS: All right. Thank you.

3 MR. ECKERT: Your Honor, at this time
4 the Government would call Detective Michael Cannon.

5 (Pause)

6 THE CLERK: Please raise your right
7 hand.

8 DETECTIVE MICHAEL CANNON, GOVERNMENT'S WITNESS, SWORN

9 THE CLERK: Thank you. Please be
10 seated. Please state your full name for the record.

11 THE WITNESS: Detective Michael Cannon,
12 CANNON, Badge 9167, assigned to Northwest Detective
13 Division.

14 THE COURT: Good afternoon, Detective
15 Cannon.

16 THE WITNESS: Good afternoon, Your
17 Honor.

18 DIRECT EXAMINATION

19 BY MR. ECKERT:

20 Q. Sir, how long have you been a police
21 officer?

22 A. Twenty years.

23 Q. Okay. And how long have you served as a
24 Philadelphia detective?

25 A. 13 years.

1 Q. Okay. And how long have you served with
2 Northwest detectives?

3 A. 13 years.

4 Q. Okay. Are you -- were you asked to assist
5 the investigation of a robbery that occurred at 152
6 East Sharpnack Street on March the 22nd of 2019?

7 A. Yes.

8 Q. Okay. Where did you respond to?

9 A. I responded to 1021 Hoarder Street. It's
10 right on the edge of Fairmount Park area.

11 Q. Okay. And why did you respond to that
12 location?

13 A. There was a car involved in an accident
14 there, a Ford Taurus.

15 Q. Okay. And was this in relation to that --
16 into the robbery investigation?

17 A. Yes, it was.

18 Q. All right. And what did you observe when
19 you arrived at the crash site?

20 A. The car hit a log. It was unattended. When
21 I looked inside the car I could see a handgun.

22 Q. Okay. Now did you search the car right at
23 that location?

24 A. No.

25 Q. Why not?

1 A. I needed to get a search warrant for the
2 car. I made arrangements for the car to be towed by
3 police tow to our police garage.

4 Q. And when you say police garage, explain what
5 that is.

6 A. It's where we examine cars and for different
7 investigations.

8 Q. Okay. So in other words, it's -- the custom
9 of the Philadelphia Police Department is not to search
10 the vehicle on location, correct?

11 A. Most times, yes. Correct.

12 Q. Okay. So you have the vehicle towed to a
13 secure facility?

14 A. Yes.

15 Q. Okay. And where's the location of that
16 facility?

17 A. 4928 McAllister Avenue.

18 Q. Okay. And it's what police officers often
19 refer to as Whitaker and McAllister, correct?

20 A. Yes.

21 Q. So did you then -- did you obtain a search
22 warrant for the vehicle?

23 A. I did.

24 Q. Okay. And did you, in fact, search it?

25 A. Yes.

1 Q. All right.

2 MR. ECKERT: If we can show 27-A just
3 to the witness, please.

4 BY MR. ECKERT:

5 Q. All right. Do you see that photograph, sir?

6 A. Yes.

7 Q. And what does that photograph depict?

8 A. It's the car I searched that night.

9 Q. Okay. And you've reviewed five photographs
10 in this case?

11 A. Yes.

12 Q. -- and they've been marked as 27 --
13 Government 27-A through E. We can go through them
14 now.

15 MR. ECKERT: If you could go to B,
16 please.

17 BY MR. ECKERT:

18 Q. Now what's that photograph depict, sir?

19 A. It's the back of the car.

20 Q. Okay. And that's the car you obtained a
21 search warrant on?

22 A. Correct.

23 Q. Okay.

24 MR. ECKERT: And we'll go to C, please.

25 BY MR. ECKERT:

1 Q. And what does that photograph depict, sir?

2 A. It's a photograph of the interior of the
3 car.

4 Q. Okay. Do all these photographs, 27-A
5 through E, do they fairly and accurately represent the
6 vehicle as you searched it on March 23rd of 2019?

7 A. Yes.

8 MR. ECKERT: Your Honor, at this time
9 we would move 27 Alpha through Echo or A through E.

10 THE COURT: Is there any objection?

11 MR. PATTERSON: No objection, Your
12 Honor.

13 MR. ECKERT: All right. If you could -
14 -

15 THE COURT: 27 --

16 MR. ECKERT: A through E, Your Honor.

17 THE COURT: -- A through E are received
18 in evidence.

19 MR. ECKERT: Thank you.

20 (Government's Exhibit Nos. 27-A through 27-E are
21 received)

22 MR. ECKERT: May we publish that to the
23 jury, please?

24 THE COURT: You may.

25 BY MR. ECKERT:

1 Q. Okay. And that's the interior of the
2 vehicle, sir?

3 A. Yes.

4 Q. Okay. What of note did you recover in the
5 vehicle?

6 A. I recovered a handgun and also a knit cap.

7 Q. A knit cap, like a baseball hat?

8 A. Yes, like a baseball cap, hat.

9 Q. Okay. All right. At this --

10 MR. ECKERT: May I have permission to
11 approach the witness, Your Honor?

12 THE COURT: You may.

13 MR. ECKERT: Thank you.

14 BY MR. ECKERT:

15 Q. Sir, I've handed you for the record what's
16 been marked as Government's 29 for identification.
17 What is it that I just handed you, sir?

18 A. A Glock handgun.

19 Q. Okay. And what is the serial number on that
20 weapon?

21 A. Serial number is BCXX649.

22 Q. Okay. And is that the firearm that you
23 recovered on -- first of all, let me back up a step.
24 On what date did you actually search this vehicle, was
25 it March 22nd or March 23rd?

1 A. I believe it was the 22nd.

2 Q. Okay. And the firearm that you're handing
3 -- that you're holding there, is that the firearm that
4 you recovered on that date?

5 A. Yes.

6 Q. Okay. And how do you know that?

7 A. From the serial number.

8 Q. Okay. And is there somewhere where you
9 would have recorded the serial number at the time of
10 the search?

11 A. Yes, the property receipt.

12 Q. Okay.

13 MR. ECKERT: And can we have the
14 property receipt just to the witness? Just to the
15 witness. Thank you.

16 BY MR. ECKERT:

17 Q. All right. Is that the -- looking at your
18 screen there, sir, just off your right shoulder, is
19 that the property receipt that you filled out in
20 relation to that firearm?

21 A. Yes.

22 Q. Okay. And did you record the serial number
23 on that property receipt?

24 A. Yes.

25 Q. All right. Is that the same serial number

1 you just read a moment ago?

2 A. It is. Yes.

3 Q. All right.

4 MR. ECKERT: At this time, Your Honor,
5 we would move Government's 29.

6 THE COURT: Any objection?

7 MR. PATTERSON: No, Your Honor.

8 THE COURT: G-29 is received.

9 (Government's Exhibit No. 29 is received)

10 BY MR. ECKERT:

11 Q. All right. Now after you -- while you were
12 searching that vehicle and you located that firearm,
13 what did you do with it?

14 A. We -- I brought it back to the Northwest
15 Detective Division. There's other paperwork we had to
16 -- I had to prepared and then it was taken to the
17 firearms identification unit at 8th and Poplar.

18 Q. Okay. And what is the firearms
19 identification unit?

20 A. That's where we take all of our ballistic
21 evidence and handguns and firearms.

22 Q. Anytime a weapon is seized in Philadelphia
23 it gets taken to FIU?

24 A. Correct.

25 Q. Okay. Now when you would have actually

1 recovered the firearm during the search of the
2 vehicle, would you -- what would you have done with it
3 prior to transporting it anywhere?

4 A. I clear the weapon to make it safe, that
5 there were no bullets in the weapon.

6 Q. Okay. When you say make it safe, just
7 explain what you mean by that.

8 A. For this type of weapon, I would release the
9 magazine which holds the bullets and also there might
10 be a bullet already in the chamber and then you just
11 -- you rack the slide back and forth to make sure that
12 it's safe and there's no bullets in it anywhere.

13 Q. Okay. And what is the purpose of doing that
14 prior to transport?

15 A. So there's no accidents.

16 Q. Okay. You mean accidents with the firearm?

17 A. The gun doesn't discharge.

18 Q. Okay. Now you said -- you also mentioned a
19 moment ago that you recovered a hat from the vehicle,
20 correct?

21 A. Yes.

22 Q. Okay. I'm going to show you what's been
23 marked as Government's 32.

24 (Pause)

25 Q. Sir, what did I just hand you?

1 A. The baseball cap with the black -- black cap
2 with the word, Legend, on the front.

3 Q. Okay. And for the record that's been marked
4 as Government's 32. Have you -- are you able to
5 determine whether that's the same hat that you
6 recovered from the -- from that vehicle?

7 A. Yes, it is.

8 Q. And how do you know that?

9 A. It was placed on a property receipt.

10 Q. Okay.

11 MR. ECKERT: At this time, Your Honor,
12 we would move Government's 32.

13 THE COURT: Any objection?

14 MR. PATTERSON: No objection, Your
15 Honor.

16 THE COURT: G-32 is received.

17 MR. ECKERT: I'm sorry. It was -- I
18 misspoke, Your Honor. It was 31. I had the wrong
19 number. I apologize. We would move 31 into
20 evidence, which is the hat.

21 THE COURT: 30 -- yes. It's 31.
22 There's also reference to the hat in 30.

23 MR. ECKERT: Now I'm moving --

24 THE COURT: That's the property --

25 MR. ECKERT: I'm sorry --

1 THE COURT: That's the property
2 receipt.

3 MR. ECKERT: Exactly. Exactly.

4 THE COURT: Have you offered that into
5 evidence? Are --

6 MR. ECKERT: No, Your Honor, just --

7 THE COURT: -- you offering --

8 MR. ECKERT: -- just the physical
9 evidence itself.

10 THE COURT: Fine. G-31 is received.

11 MR. ECKERT: Thank you.

12 (Government's Exhibit No. 31 is received)

13 MR. ECKERT: Now if you could -- if we could
14 go to 27-D, please, and that's to the jury as well.
15 We can go -- thank you.

16 BY MR. ECKERT:

17 Q. If you could just indicate where it was that
18 you recovered the firearm in the vehicle, sir.

19 A. The driver's side on the floor underneath
20 the pedals.

21 Q. Okay. Thank you.

22 MR. ECKERT: Your Honor, may I have one
23 moment to consult with counsel?

24 THE COURT: You may.

25 (Pause)

1 MR. ECKERT: I'm sorry. If we could go
2 to 27-E.

3 BY MR. ECKERT:

4 Q. Same question with regards to the hat, where
5 in the vehicle was the hat?

6 A. The driver's seat.

7 Q. Okay. Thank you.

8 MR. ECKERT: No further questions.

9 THE COURT: You may cross-examine.

10 MR. PATTERSON: Thank you.

11 CROSS-EXAMINATION

12 BY MR. PATTERSON:

13 Q. Officer, good afternoon.

14 A. Good afternoon.

15 Q. I was writing some notes so I might have
16 missed a few things, so if I have to ask you to
17 repeat, please -- I apologize.

18 When did you get the search warrant?

19 A. That night.

20 Q. The 22nd?

21 A. The 22nd, yes.

22 Q. If I tell you that this alleged incident
23 occurred on the 22nd, would that refresh your memory
24 that you got the search warrant on the same day, on
25 the 22nd?

1 A. Yes.

2 Q. So you didn't -- I believe -- did you just
3 testify that you got the warrant on the 23rd?

4 A. When I looked at the property receipt it
5 said the 23rd. By the time it was recovered, it was
6 -- it turned into the 23rd date.

7 Q. Okay. So just for purposes of today and
8 your testimony, did you search the car before or after
9 you got the search warrant?

10 A. After.

11 Q. Okay. And you also described -- they had
12 shown you a picture of a -- what's purported to be a
13 firearm, a weapon, a handgun. That was under -- kind
14 of by the gas pedal and brake pedal, correct?

15 A. Yes.

16 Q. And that -- was that -- before you got the
17 search warrant was that in plain view?

18 A. Yes.

19 Q. Okay. And plain view is when a police
20 officer is legally where he is -- can be and he
21 observes something in plain view, right?

22 A. Yes.

23 Q. Okay. Now -- and this is where I kind of
24 may not have heard you. Is it standard police
25 procedure to un-chamber a round?

1 A. When you're going to handle a weapon?

2 Q. Yeah.

3 A. Yes, make it safe.

4 Q. If you could tell me so the jury can hear,
5 what is chambering a round? Let me lay a foundation
6 first. How long have you been a police officer,
7 Detective Cannon?

8 A. 13 years.

9 Q. And so you've had probably extensive
10 training with the use of firearms, correct?

11 A. Yes.

12 Q. And when you chamber a round, chambering a
13 round is specific for what I believe is called a semi-
14 automatic weapon; is that correct?

15 A. Yes.

16 Q. As opposed to a revolver?

17 A. Yes.

18 Q. Okay. Because a revolver, it's -- it
19 revolves. It's got a round thing and you have to
20 manually put all the bullets in, correct?

21 A. Correct.

22 Q. And then you don't actually chamber it
23 because there's always a bullet, and then once you
24 fire it kind of advances to the next round in the
25 round part, correct?

1 A. Yes.

2 Q. I'm not a gun guy so I'm --

3 A. And I'm not an expert either --

4 Q. Okay.

5 A. -- but I know the basics.

6 Q. And I'm not asking for your opinion. I'm
7 just asking for, within your degree of knowledge as
8 being a detective for 13 years you know at least the
9 functionings of a gun, correct?

10 A. Yes.

11 Q. Okay. And I'm going to ask you specifically
12 the functioning of a semi-automatic just so we're
13 clear.

14 Now you were the first officer to manipulate
15 this firearm that you found in this Taurus; is that
16 correct?

17 A. Yes.

18 Q. Okay. And, again, I asked the other
19 officer. Obviously you weren't here because of
20 sequestration, but you were trained and what you did
21 in this case is you used latex gloves so you don't
22 transfer your own DNA or fingerprints on this weapon;
23 is that correct?

24 A. Yes.

25 Q. Because obviously you want the weapon to be

1 in the condition and location as you found it before
2 it's actually placed into an evidence bag; is that
3 correct?

4 A. Yes.

5 Q. And the evidence bag is then sealed
6 (indiscernible). Did you do this? Did you put it in
7 an evidence bag and then seal it?

8 A. Yes.

9 Q. Okay. And when is that seal broken, in the
10 lab?

11 A. Yes, after -- when we submit it down at 8th
12 and Poplar.

13 Q. And when you -- you took the -- you grabbed
14 the gun with your hand with latex gloves on; is that
15 correct?

16 A. Yes.

17 Q. And did you un-chamber a round?

18 A. I don't remember whether there was a round
19 in the handgun or not.

20 Q. Okay. There could have been. There could
21 have not been. You just don't remember?

22 A. I don't remember.

23 Q. Okay. Would it be -- if I can ask you if it
24 was loaded, do you remember?

25 A. Yes, it was loaded.

1 Q. And if I told you eight rounds, would that
2 be a fair statement if you remember?

3 A. Yes. It was eight rounds.

4 Q. When they say live round, what's a live
5 round as opposed to a non-live round?

6 A. A round that can be fired.

7 Q. So this gun was able to be fired at least
8 eight times because there was eight live rounds,
9 correct?

10 A. Yes.

11 Q. All right. Did you -- were you responsible
12 to then transfer this gun to either the Philadelphia
13 crime lab or the Pennsylvania state police crime lab?
14 Did you do that or somebody else do that within the
15 police department?

16 A. Someone else did it.

17 Q. Okay. Do you know if this gun that you --
18 so when you bagged and tagged it, was that the end of
19 it -- of your involvement with this gun?

20 A. Yes.

21 Q. All right. So you wouldn't have any -- it
22 wasn't you, then, that would send it off -- strike
23 that.

24 Did you know if this gun was sent off for a
25 functionality test?

1 A. All the guns are, but I don't know
2 personally that it was.

3 Q. And tell me or tell the jury what a
4 functionality test is.

5 A. To determine whether the gun will, in fact,
6 fire a bullet, a projectile.

7 Q. Now you just said that in every situation
8 where a gun is found that it might be involved in some
9 type of incident it is always tested for
10 functionality, correct?

11 A. That's my understanding.

12 Q. And is that because -- for -- it's going to
13 be used as evidence or in testimony at a later
14 proceeding since it's a criminal trial that you might
15 want to prove that the gun in question could actually
16 fire a firearm, correct?

17 A. Correct.

18 Q. Do you have any information with the
19 functionality of this -- the results of the
20 functionality test of this gun?

21 A. I don't.

22 Q. Okay. Again, I'm not asking your -- I'm not
23 asking for an expert opinion, but I'm going to try to
24 describe this for the record. My right hand is
25 clenched like I'm holding the gun; is that a fair

1 statement, like this, like I'm holding a gun?

2 A. Yes.

3 Q. And is -- and, again, I'm going to try to do
4 this so everyone can know this for the record.

5 When you chamber a round, you would -- if
6 you're a righty you would hold a gun in your right
7 hand. Then you would take your left hand like this,
8 and I'm levitating my left hand over my right hand and
9 then it's a quick jerking motion back and forth; is
10 that correct?

11 A. Yes, on the slide.

12 Q. Right. So if you're holding the gun down
13 here, gun in your hand -- again, my hand is in the
14 position of a, like I'm holding a weapon, and then my
15 left hand is over my right hand and I'm moving my left
16 hand towards me and then away from me. So it's quick
17 action like that, correct?

18 A. Well, you could let your hand go. It has to
19 come back.

20 Q. It's like spring-loaded, right?

21 A. Yes.

22 Q. You can chamber rounds in a real quick
23 motion like that, right?

24 A. Pretty quick.

25 Q. Yeah.

1 MR. PATTERSON: Thanks.

2 THE WITNESS: You're welcome.

3 MR. WITTELS: No questions.

4 MS. MEEHAN: No questions.

5 THE COURT: Thank you very much.

6 MR. ECKERT: Your Honor, I just have
7 two brief --

8 THE COURT: I'm sorry.

9 MR. ECKERT: -- redirect questions. I
10 apologize for interrupting.

11 THE COURT: Go ahead.

12 MR. ECKERT: Thank you.

13 Your Honor, may I approach the witness?

14 THE COURT: You may.

15 MR. ECKERT: Thank you.

16 REDIRECT EXAMINATION

17 BY MR. ECKERT:

18 Q. Sir, I'm going to show you what's been
19 previously marked as Government's 25 and 30 for
20 identification purposes only. Would the middle of
21 that search warrant there, would that refresh your
22 recollection as to the exact time you applied for it?

23 A. Yes.

24 Q. So I'm going to retrieve Government's 25
25 from the witness. What time was it that you applied

1 for the search warrant, sir?

2 A. 10:47 p.m.

3 Q. On what date?

4 A. 3/22/19.

5 Q. Thank you so much.

6 And --

7 MR. PATTERSON: Your Honor, I'm sorry.
8 I would just like to see the document.

9 MR. ECKERT: Oh, it's Government's 25.
10 It's been provided.

11 MR. PATTERSON: Oh, 25. Can I see
12 yours, please?

13 MR. ECKERT: Yeah. Of course.

14 BY MR. ECKERT:

15 Q. Sir, a similar line of questioning for
16 Government's 30. Would Government's 30 refresh your
17 recollection as to the exact time that it was that the
18 items were recovered at the top of the property
19 receipt there?

20 A. Yes. 3/23/19, 1:05.

21 Q. Thank you.

22 MR. ECKERT: No further questions.

23 THE COURT: Thank you.

24 MR. ECKERT: And that was Government's
25 30. Neither of them are being offered.

1 That concludes my redirect. Thank you.

2 THE COURT: You may step down,

3 Detective Cannon.

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Thank you.

6 MR. ECKERT: Your Honor, may I retrieve
7 the pistol evidence from the witness stand?

8 THE COURT: You may.

9 MR. ECKERT: Thank you.

10 (Pause)

11 MS. MARTIN: May I, Your Honor?

12 THE COURT: Yes, you may.

13 MS. MARTIN: The Government calls
14 Firearms Examiner Andrejzak.

15 (Pause)

16 THE CLERK: Please raise your right
17 hand.

18 OFFICER RAYMOND ANDREJZAK, GOVERNMENT'S WITNESS, SWORN

19 THE CLERK: Thank you. Please be
20 seated.

21 Please state your full name for the
22 record.

23 THE WITNESS: Police Officer Raymond
24 Andrejzak, Badge Number 1935.

25 THE COURT: Good afternoon, sir.

1 THE WITNESS: Good afternoon.

2 MS. MARTIN: May I proceed, Your Honor?

3 THE COURT: You may.

4 DIRECT EXAMINATION

5 BY MS. MARTIN:

6 Q. Good afternoon, Officer.

7 A. Good afternoon.

8 Q. Could you please tell the ladies and
9 gentlemen of the jury how you're currently employed?

10 A. I am a Philadelphia police officer currently
11 assigned to the Firearms Identification Unit.

12 Q. And what is the Firearms Identification
13 Unit?

14 A. That is a special unit within the
15 Philadelphia Police Department that's responsible for
16 examining and processing all firearms related evidence
17 in the City of Philadelphia.

18 Q. How long have you been with FIU?

19 A. 13 years.

20 Q. And prior to joining the firearms unit?

21 A. I was a patrol officer for 13 and a half
22 years.

23 Q. And when you joined the Firearms
24 Identification Unit, did you complete any additional
25 training or education?

1 A. Yes, I did.

2 Q. Can you please tell the ladies and gentlemen
3 of the jury about that?

4 A. I received 18 months of academic and
5 apprenticeship type training. During that time I
6 completed a 50-gun practical test, 250 practical
7 microscopy tests with over 1,000 microscopic
8 comparisons. I've completed armors courses and Glock
9 pistols, Colt M-16 rifles, Benelli shotguns, Mossberg
10 shotguns. I've completed a serial number restoration
11 course given by the Bureau of Alcohol, Tobacco,
12 Firearms and Explosives. I've toured U.S. military
13 installations that specialize in the firearms and
14 ammunition development and testing. I've also toured
15 several firearms manufacturers and ammunition
16 facilities such as Colt, Smith & Wesson, Ruger,
17 Savage, U.S. Firearms, Drillmaster Eldorado, LeHigh
18 Defense. I have attended autopsies with the
19 Philadelphia Medical Examiner's Office dealing with
20 recovery and preservation of ballistic evidence. I
21 receive training annually to keep my training updated.
22 So it's always ongoing. My continuing education is
23 always ongoing.

24 Q. As a Firearms Identification Unit officer
25 what are your roles and responsibilities?

1 A. Well, as the name would imply we identify
2 firearms first off and we do that by make, model,
3 caliber, country of origin and serial number. We test
4 fire firearms for operability and to retrieve
5 evidence. We do various other firearms testing on an
6 as needed basis including serial number restoration.
7 And one of the most important things that we do is the
8 examination and microscopic comparison of ballistic
9 evidence.

10 Q. Can you explain how it is that you receive a
11 firearm and the procedure that you go through when
12 you're examining a firearm?

13 A. Well, I receive a firearm through a chain of
14 custody where it has the assigned police officer or
15 detective, investigator will submit evidence into our
16 building. It comes through the intake process where
17 it comes down to the Firearms Identification Unit and
18 ultimately it is assigned to a firearms examiner.

19 Once I retrieve my evidence, I am going to
20 maintain the chain of custody either for scanning the
21 bar code on the evidence to myself and checking the
22 evidence against the property receipt for accuracy.

23 After that I can start with a bench
24 examination in the case of a firearm. And what that
25 basically means is I am going to visually examine it,

1 check it for any unsafe conditions or modifications or
2 anything that might make it unsafe to test fire. I'm
3 going to check barrel conditions. I'm going to note
4 all of this in my report.

5 Once I determine I'm able to test fire it
6 safely, then I will proceed with the test firing
7 process. During that time I create test samples of
8 bullet specimens and fire cartridge cases which are
9 marked with the identifying FIU case number and placed
10 in envelopes. They are filed and/or used for
11 microscopic comparison of any other submitted
12 ballistic evidence.

13 Q. You mentioned that you create a report. Do
14 you detail all of your findings in that report?

15 A. Yes, I do.

16 Q. And are those findings reviewed by anyone
17 else?

18 A. Yes. I have a co-examiner on all
19 examinations I conduct.

20 Q. And during the course of your career could
21 you estimate how many firearms you've examined?

22 A. Tens and tens of thousands.

23 Q. And have you ever testified in court about
24 your reports or the results of those examinations?

25 A. Yes, I have.

1 Q. How many times?

2 A. I believe this is Number 135 or 136.

3 Q. And have you ever been qualified as an
4 expert in the field of firearms identification and
5 analysis?

6 A. Yes, I have.

7 Q. How many times?

8 A. Every time.

9 Q. And in what jurisdictions?

10 A. Here in Federal Court, Common Pleas, and
11 Municipal.

12 MS. MARTIN: Your Honor, at this time I
13 move to qualify Officer Andrejzak as an expert in the
14 field of firearms identification and analysis.

15 THE COURT: Thank you.

16 Ladies and gentlemen, this witness is
17 an expert witness. He's going to testify based on
18 evidence presented at other times during the trial.
19 So we start with brief examination of his
20 qualifications, and the defense is given an
21 opportunity to cross-examine the witness based on his
22 qualifications. That's what we'll hear next.

23 Mr. Patterson.

24 VOIR DIRE EXAMINATION

25 BY MR. PATTERSON:

1 Q. Officer, you did a function -- is it a
2 functionality test or is it -- did you use another
3 word for it?

4 A. It's -- well, it is a functionality test
5 basically, but we just refer to it as a bench
6 examination.

7 Q. Okay. And you were asked to perform one on
8 this --

9 THE COURT: Wait. We're on
10 qualification.

11 MR. PATTERSON: Oh, I'm sorry. No,
12 Judge. I don't have any objections.

13 THE COURT: That's --

14 MR. PATTERSON: I was -- I
15 misunderstood. I apologize.

16 THE COURT: No. That's the way we
17 start things in Federal Court with expert witnesses.

18 MR. PATTERSON: Yeah. I'm sorry,
19 Judge. No. Absolutely --

20 THE COURT: Mr. Wittels, any --

21 MR. PATTERSON: No objection at all.

22 THE COURT: -- cross on qualifications?

23 MR. WITTELS: Oh, no. He's known to me
24 as an expert and if he was in private play I would use
25 him.

1 (Laughter)

2 THE COURT: Ms. Meehan.

3 MS. MEEHAN: No questions.

4 THE COURT: You may proceed.

5 MS. MARTIN: Thank you, Your Honor.

6 BY MS. MARTIN:

7 Q. Officer, did you conduct an examination of
8 the firearm recovered in this case?

9 A. Yes, I did.

10 Q. And did you write a report that detailed
11 your findings regarding that firearm?

12 A. Correct.

13 Q. Would you recognize the firearm in question
14 and the report that you created if I showed them to
15 you?

16 A. Yes, I would.

17 MS. MARTIN: If I could please have on
18 the screen the witness shown what's been marked as
19 Government's Exhibit 36.

20 And, Your Honor, if I may approach with
21 Exhibit 29 that's been previously admitted into
22 evidence.

23 THE COURT: You may.

24 MS. MARTIN: For the record I'm
25 approaching the witness with what's been marked as

1 Government's Exhibit 29.

2 THE WITNESS: thank you.

3 BY MS. MARTIN:

4 Q. Officer, do you recognize the report that's
5 on the screen?

6 A. Yes, I do.

7 Q. Is that the report you created in relation
8 to the firearm in this case?

9 A. Yes, it is.

10 Q. And can you identify what's in front of you
11 there, Government Exhibit 29?

12 A. This is the firearm I examined in reference
13 to this case and I'm going to identify it by Serial
14 Number BCXX649. It's a Glock model 26 semi-automatic
15 five millimeter.

16 Q. You said it's a Glock?

17 A. A Glock, yes.

18 Q. And did you note the serial number, the same
19 serial number in your report there listed as 36?

20 A. Yes.

21 Q. Exhibit 36?

22 A. Correct.

23 Q. Did you examine this firearm in accordance
24 with the same procedure that you outlined for the
25 ladies and gentlemen of the jury earlier in your

1 testimony?

2 A. Yes, I did.

3 Q. And you testified it was a Glock. What is
4 the capacity of the gun?

5 A. The capacity of this firearm is ten in the
6 magazine and one in the chamber for a total of 11
7 cartridges.

8 Q. When you received this firearm were there
9 any rounds in the gun, in the chamber? Was there any
10 ammunition in the gun?

11 A. No. Firearms are not submitted to us
12 loaded. They are unloaded before being brought into
13 the building. Ammunition is separately -- put
14 separately into an envelope.

15 Q. Did you test fire this weapon?

16 A. Yes, I did.

17 Q. Did you determine whether the firearm was
18 operable?

19 A. It was operable.

20 Q. Meaning capable of firing a projectile?

21 A. Meaning it will function as it was supposed
22 to and it will -- it is capable of firing a
23 projectile.

24 Q. And did you note these findings in your
25 report detailed as Exhibit 36?

1 A. Yes, I did.

2 Q. Did you make all of these determinations to
3 a reasonable degree of scientific certainty?

4 A. Yes.

5 MS. MARTIN: Your Honor, I would move
6 to admit Government's Exhibit 36.

7 MR. PATTERSON: No objection, Your
8 Honor.

9 THE COURT: Should we go to sidebar?
10 Yes. Sidebar.

11 (AT sidebar)

12 THE COURT: Well, the report is
13 hearsay. It doesn't normally come into evidence. The
14 witness testifies regarding the findings in the
15 report. Is this an agreement? Are you agreeing that
16 the report comes into evidence? I'm looking at the
17 Government. I'm looking really at --

18 MR. PATTERSON: I don't care. I'm okay
19 with it.

20 THE COURT: Sure. (Indiscernible).

21 MR. PATTERSON: That's the theory of my
22 case anyway, so, yes, I would not oppose that coming
23 into evidence.

24 THE COURT: Oh (indiscernible).

25 MS. MEEHAN: I don't have any problem

1 with it.

2 THE COURT: You look surprised?

3 MS. MARTIN: Your Honor, I was a State
4 Court prosecutor. I -- we always admit it. I didn't
5 know.

6 THE COURT: No. Here he can use the
7 report when he testifies, but it's not received in
8 evidence.

9 MS. MARTIN: I understand.

10 THE COURT: But it is in this case.
11 It's admitted --

12 MS. MARTIN: Okay.

13 THE COURT: -- without objection. And
14 I will -- so --

15 MS. MARTIN: Duly noted.

16 THE COURT: -- put on the record.
17 Thank you.

18 (Sidebar concluded)

19 THE COURT: The parties have agreed
20 that the officer's report should come into evidence.
21 There's no objection to it. And so that exhibit,
22 Exhibit, I think it's 36, is received in evidence.

23 (Government's Exhibit No. 36 is received)

24 MS. MARTIN: Your Honor, with that I
25 have nothing further for the witness.

1 THE COURT: Well, I'm not precluding
2 his testifying regarding what's in the report. You
3 can handle that as you see fit.

4 MS. MARTIN: I was planning to admit
5 the exhibit and sit down, Your Honor.

6 THE COURT: Then you may do so.

7 MS. MARTIN: Thank you.

8 THE COURT: Exhibit is received into
9 evidence.

10 Cross-examine, anyone?

11 MR. PATTERSON: Very briefly.

12 CROSS-EXAMINATION

13 BY MR. PATTERSON:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. Detective, thousands of guns, right, you've
17 examined?

18 A. Tens and tens of thousands.

19 Q. And when you hear the expression chambering
20 a round, what does that mean?

21 A. It means that a cartridge is being loaded
22 into the chamber and making the gun ready to fire.

23 Q. When you hear the action of a gun, what is
24 that, on a semi-automatic specifically?

25 A. Well, if you hear anything it's the sound of

1 the slide and the barrel cycling -- well, being pulled
2 rearward under spring tension and then returning
3 forward under spring tension. If you pull it to the
4 rear and let it go forward, it's going to go fast and
5 slap forward under that spring tension. So if you're
6 going to hear anything it's usually the metal on metal
7 of the slide and the barrel or slide barrel and frame
8 making that noise.

9 Q. And specifically this Glock is a semi-
10 automatic as you described, correct?

11 A. Correct.

12 Q. And, again, to chamber the round you -- the
13 slide is what you actually grab with the other hand
14 that you're holding the gun with and move it back; is
15 that correct?

16 A. Well, you can -- there's two ways. You can
17 do either. And the condition that it's in right now,
18 if I were to insert a loaded magazine and just simply
19 pulling back on the slide and letting it go forward
20 under spring tension would chamber a cartridge, or if
21 the slide were in the forward position and I inserted
22 a loaded magazine, I would have to pull back on the
23 slide and let it go forward under spring tension. So
24 either way would load the firearm.

25 Q. Okay. And you already described this gun as

1 functional, right?

2 A. That's correct.

3 Q. So whenever was holding this gun before you
4 got to it, they could fire a round, correct?

5 A. It could have been fired, yes.

6 Q. They could have fired eight rounds?

7 A. Yes. There were eight cartridges with this
8 firearm.

9 Q. Okay. And you actually noted that in your
10 report, I believe, a full metal jacket. What is that,
11 full metal jacket?

12 A. Full metal jacket is a bullet design which
13 basically means that -- well, there's two -- well, let
14 me explain. The two most common types of bullet
15 designs are full metal jacketed rounds and jacketed
16 hollow points. And with a full metal jacket around it
17 just basically means that the -- I'll use this for
18 just a quick demonstration. Although this isn't
19 perfectly round, the nose of the bullet is rounding
20 giving it the full metal jacket design. With a
21 jacketed hollow point there would be a open cavity in
22 the nose of the bullet creating a hollow point.

23 So full metal jacketed round is a very
24 common type of ammunition bullet design. So you're
25 going to see it -- we see it a lot.

1 Q. And since you said you did tens of
2 thousands, is every gun recovered in a police
3 investigation always tested or bench tested for
4 functionality?

5 A. Every firearm that we get is examined in
6 that same exact way. It does not mean that every
7 firearm that we receive is operable as received.

8 Q. But this gun was operable as received?

9 A. Yes. That's correct.

10 Q. You could fire a round?

11 A. Yes. Correct.

12 Q. Okay. Now -- and I've got to describe this
13 for the record, so if you would please follow along.

14 I have my right hand in a downward position
15 pointing towards the floor and my right hand is
16 approximating holding a gun. Would you agree with
17 that?

18 A. Sure.

19 Q. Okay. Now with my left hand, I'm putting my
20 left hand over my right hand as if I'm grabbing the
21 slide. Is that consistent with what you would see
22 when chambering a round?

23 a. Sure.

24 Q. And then to chamber a round you would move
25 your left hand up towards you and then back, correct?

1 A. You could -- well, that's what we refer to
2 as riding the slide which you don't really want to do
3 because it can cause the firearm to jam. It's better
4 to just let it go forward under the spring tension.

5 Q. Okay. But if you saw this motion, again,
6 I'll be moving my left hand up towards my body and
7 back down in a quick motion like this, is that
8 consistent with somebody chambering a round?

9 A. Yes.

10 Q. Thank you.

11 MR. PATTERSON: Nothing further.

12 MR. WITTELS: Just a couple of
13 questions if I may.

14 CROSS-EXAMINATION

15 BY MR. WITTELS:

16 Q. Officer, did you test the trigger pull on
17 this weapon?

18 A. The trigger pull, no, sir, it was not
19 conducted on that. We only generally do that with
20 homicides and police shootings.

21 Q. Okay. Thank you.

22 THE COURT: Ms. Meehan.

23 MS. MEEHAN: No question, Your Honor.

24 THE COURT: Any redirect?

25 MS. MARTIN: No redirect, Your Honor.

1 THE COURT: That concludes your
2 testimony, sir. Thank you very much.

3 THE WITNESS: Thank you, Your Honor.

4 MR. ECKERT: Your Honor, at this time
5 the Government would call Officer Fernandez.

6 May I retrieve the exhibit from the --

7 THE COURT: You may.

8 MR. ECKERT: Thank you.

9 THE COURT: Before we continue with the
10 next witness, ladies and gentlemen, because of the
11 long break around lunch time, the fact that we didn't
12 resume until three something, it's now 4:00, I had not
13 planned on an afternoon break unless anyone on the
14 jury feels they need a break.

15 Now I don't normally ask juries to
16 respond for questions in open court, but if anyone
17 needs a break, raise your hand and we'll recess for
18 ten minutes. Any one of you needs a break, don't be
19 embarrassed. If you need a break, we'll break for ten
20 minutes.

21 Let the record show no hands.

22 MR. WITTELS: Can I step out for two
23 minutes? One minute?

24 THE COURT: Are you raising your hand?

25 MR. WITTELS: I am.

1 (Laughter)

2 MR. WITTELS: I am, Judge. But I don't
3 need ten minutes.

4 THE COURT: We'll wait for you, Mr. --

5 MR. WITTELS: I'll be right back.

6 THE COURT: -- Wittels. I thought I
7 had the lawyers under control.

8 (Laughter)

9 THE COURT: You can proceed. We don't
10 have to -- we're not going to proceed with the
11 witness, but you can bring the next witness into
12 court.

13 MR. ECKERT: She's here, Your Honor.
14 Officer Fernandez is waiting in the first row.

15 THE COURT: Fine. All right.

16 MR. ECKERT: Thank you.

17 THE COURT: We'll proceed in just a few
18 minutes.

19 (Pause)

20 THE COURT:

21 THE CLERK: Please raise your right
22 hand.

23 OFFICER FERNANDEZ, GOVERNMENT'S WITNESS, SWORN

24 THE CLERK: Thank you. Please be
25 seated.

1 Please state your full name for the
2 record.

3 THE WITNESS: Abigail Fernandez.

4 THE COURT: Good afternoon.

5 DIRECT EXAMINATION

6 BY MR. ECKERT:

7 Q. Ma'am, good afternoon.

8 A. Good afternoon.

9 Q. How are you currently employed?

10 A. Police officer. Philadelphia Police
11 Department, 14th District.

12 Q. Okay. And how long have you served in that
13 capacity?

14 A. Say that again.

15 Q. How long have you been a police officer?

16 A. Five years.

17 Q. Okay. Were you working on March the 22nd of
18 2019?

19 A. That's correct.

20 Q. Who was your partner that day?

21 A. Officer Xhelo.

22 Q. Okay. And he's since been promoted to
23 detective?

24 A. That's correct.

25 Q. Okay. Did you respond to a call for service

1 at 152 East Sharpnack around 5 p.m.?

2 A. Yes.

3 Q. All right. Now there's previously been
4 testimony about the crash site and the pursuit, but
5 we're going to fast-forward past all that. I want to
6 go to the point upon which you were finishing the
7 wooded area looking for a suspect. Did you and your
8 partner respond back to 152 East Sharpnack after that?

9 A. Yes.

10 Q. Why did you go back to the store?

11 A. I wanted to look at the surveillance
12 footage.

13 Q. Okay. And did you go inside the store?

14 A. Yes.

15 Q. Who did you observe present inside?

16 A. A few officers, employees and a female.

17 Q. Okay. Was that female Ms. Carlene Webster?

18 A. Yes.

19 Q. All right. Were you asked to transport Ms.
20 Webster to Northwest Detectives?

21 A. Yes.

22 Q. Okay. And did you take possession of her
23 cell phone prior to that drive?

24 A. Yes.

25 Q. All right. What happened on the car ride?

1 A. That phone that I had possession of rang
2 multiple times. After that second time that it rang,
3 it was the same phone number. I jotted down that
4 phone number --

5 Q. okay.

6 A. -- in my notepad.

7 Q. And do you recall the phone number as you
8 sit here today?

9 A. Most of it.

10 Q. Well, what do you recall?

11 A. 267-333. I don't remember the last four.

12 Q. Okay. And would the report of investigation
13 from your interview with the U.S. Attorney's Office on
14 June 11th, 2019, would that refresh your recollection?

15 A. Yeah.

16 MR. ECKERT: Your Honor, I'm going to
17 mark that ROI, report of investigation, as
18 Government's 53 for ID only.

19 THE COURT: All right.

20 (Pause)

21 MR. ECKERT: May I approach the
22 witness, Your Honor?

23 THE COURT: Is there a copy for the
24 Court?

25 MR. ECKERT: I'm sorry. Yes, sir.

1 May I approach the witness, Your Honor?

2 THE COURT: You may.

3 MR. ECKERT: Thank you.

4 BY MR. ECKERT:

5 Q. Ma'am, I'm going to turn your attention to
6 Government's 53 for identification purposes only. If
7 you could review paragraph 9 there and when you're
8 finished look up at me.

9 Okay. Has your recollection been refreshed?

10 A. Yes.

11 MR. ECKERT: Let the record reflect I
12 retrieved the exhibit from the witness.

13 BY MR. ECKERT:

14 Q. What was the last four digits?

15 A. 9443.

16 Q. Thank you.

17 MR. ECKERT: I have no further
18 questions for the witness.

19 THE COURT: Any cross?

20 MR. PATTERSON: I don't, Your Honor.

21 Thanks.

22 THE COURT: Mr. Wittels?

23 MR. WITTELS: No, Judge.

24 MS. MEEHAN: No, Your Honor.

25 THE COURT: Fine. That concludes your

1 testimony, Officer.

2 THE WITNESS: Thank you.

3 THE COURT: Thank you.

4 MR. ECKERT: Your Honor, at this time
5 the Government would call ATF Special Agent Sean
6 Reznik.

7 (Pause)

8 THE CLERK: Please raise your right
9 hand.

10 SPECIAL AGENT SHAWN REZNIK, GOVERNMENT'S WITNESS,
11 SWORN

12 THE CLERK: Thank you. Please be
13 seated.

14 Please state your name for the record.

15 THE WITNESS: Shawn Reznik.

16 DIRECT EXAMINATION

17 BY MR. ECKERT:

18 Q. Sir, if you could just start off by telling
19 the ladies and gentlemen of the jury how are you
20 employed?

21 A. I'm employed as a Special Agent with the
22 Bureau of Alcohol, Tobacco, Firearms and Explosives.

23 Q. Okay. And is that here in Philadelphia?

24 A. Yes.

25 Q. Okay. And how long have you been an ATF

1 agent?

2 A. Since May of 2015.

3 Q. Okay. And what are your current duties and
4 responsibilities?

5 A. Currently, we work investigatively for
6 federal firearms violations in a violent crimes group
7 and a HIDTA group which is a High Intensity Drug
8 Trafficking area. My other duties include interstate
9 nexus expert.

10 Q. Okay. And have you received any specialized
11 training regarding firearms?

12 A. Yes.

13 Q. Explain that.

14 A. I attended a basic criminal investigator's
15 school down at the Federal Law Enforcement Training
16 Center down in Glencoe, Georgia as well as a special
17 agent basic training for the ATF. And I also went
18 back down there in 2019 for the firearms nexus school.

19 Q. Okay. And how long was that firearms nexus
20 school?

21 A. It was a week.

22 Q. Okay. And what's the goal of that course?
23 What are you trying to learn?

24 A. More about firearms in general, specifically
25 identification of the firearm, different models,

1 different types as well as where they're manufactured,
2 whether or not they're manufactured outside of certain
3 states to determine whether or not firearms have
4 traveled through interstate or foreign commerce.

5 Q. Okay. And have you previously testified in
6 federal or state court as an expert witness regarding
7 the place of firearms manufacturing?

8 A. Yes.

9 Q. How many times?

10 A. Once.

11 Q. And where was that?

12 A. In the Eastern District of Pennsylvania.

13 Q. So same building you're in right now?

14 A. Correct.

15 MR. ECKERT: Your Honor, at this time
16 we would move Agent Reznik as an expert in the place
17 of firearms manufacturing.

18 MR. PATTERSON: No objection.

19 MR. WITTELS: No objection.

20 MS. MEEHAN: No objection.

21 MR. ECKERT: No objection?

22 MS. MEEHAN: I said no objection.

23 MR. ECKERT: Oh, I'm sorry. I'm sorry.

24 MS. MEEHAN: Yeah. No objection.

25 THE COURT: Then we will hear ATF Agent

1 Reznik's testimony.

2 MR. ECKERT: Thank you, Your Honor.

3 BY MR. ECKERT:

4 Q. Now if you could just indicate to the ladies
5 and gentlemen of the jury, what are the procedures you
6 follow to determine where it is that firearms are
7 manufactured?

8 A. Typically an agent or state or local law
9 enforcement will provide the firearm to me at which
10 point I look at the different identification marks on
11 the firearm to include proof marks and stuff like
12 that. We are given numerous books and reference
13 materials as well as documents that go back years that
14 the ATF has collected to determine where firearms are
15 manufactured.

16 Q. Okay. And have you had the opportunity to
17 examine what's been previously admitted as
18 Government's 29 which is the firearm in this case?

19 A. Yes.

20 MR. ECKERT: Your Honor, may I approach
21 the witness?

22 THE COURT: You may.

23 MR. ECKERT: Thank you.

24 BY MR. ECKERT:

25 Q. Sir, I've handed you what's been admitted,

1 previously admitted as Government's 29. Can you
2 examine that, please, sir?

3 Okay. Are you familiar with that firearm,
4 sir?

5 A. Yes.

6 Q. Okay. And that's the firearm that you
7 examined for -- in preparation for your testimony
8 here?

9 A. Correct.

10 Q. All right. And based on your examination
11 and research do you have an opinion regarding where
12 that firearm was manufactured?

13 A. Yes.

14 Q. And what is that opinion?

15 A. It was manufactured in Austria and then it
16 was imported into the United States at the Glock
17 factory in Smyrna, Georgia.

18 Q. Okay. And therefore by virtue of its
19 recovery in Philadelphia, Pennsylvania, do you believe
20 that firearm would have traveled in interstate
21 commerce?

22 A. Yes.

23 Q. Thank you.

24 MR. ECKERT: I have no further
25 questions of the witness, Your Honor.

1 THE COURT: Any cross-examination?

2 MR. PATTERSON: No cross, Your Honor.

3 Thank you.

4 MR. WITTELS: No cross.

5 THE COURT: Mr. Wittels.

6 MS. MEEHAN: No questions.

7 THE COURT: Thank you.

8 That concludes your testimony, Agent.

9 THE WITNESS: Thank you.

10 THE COURT: Thank you.

11 (Pause)

12 MR. ECKERT: May I, Your Honor?

13 THE COURT: Yes, you may.

14 MR. ECKERT: Your Honor, at this time
15 the Government will call Special Agent Mike Orchulli.

16 MS. MEEHAN: Your Honor, may I speak to
17 counsel for an offer of proof?

18 MR. ECKERT: Sure.

19 MS. MEEHAN: May we speak to counsel?

20 Sorry.

21 (Pause)

22 MS. MEEHAN: Thank you, Your Honor.

23 MR. ECKERT: Can I just have one
24 moment, Your Honor, to speak with counsel?

25 THE COURT: Yes.

1 (Pause)

2 MR. ECKERT: I'm sorry for the delay to
3 everyone.

4 Please, Mr. Orchulli, Agent Orchulli.

5 SPECIAL AGENT MICHAEL ORCHULLI, GOVERNMENT'S WITNESS,
6 SWORN

7 THE CLERK: Thank you. Please be
8 seated.

9 Please state your name for the record.

10 THE WITNESS: Special Agent Michael
11 Orchulli, O-R-C-H-U-L-L-I.

12 DIRECT EXAMINATION

13 BY MR. ECKERT:

14 Q. Sir, how are you currently employed?

15 A. Special Agent with the ATF, Alcohol, Tobacco
16 Firearms and Explosives.

17 Q. Is that here in Philadelphia?

18 A. Yes.

19 Q. Okay. And what are your duties with the
20 ATF?

21 A. I'm in a group that we're considered a
22 violent crime task force, also considered HITDA, which
23 is High Intensity Drug Trafficking Area.

24 Q. Okay. And do you have any law enforcement
25 experience prior to your service with ATF?

1 A. Yes. I was a federal air marshal for five
2 years in Washington, D.C.

3 Q. Okay. And I apologize if I already asked
4 you, but how long have you been with the ATF?

5 A. In May it will be five years.

6 Q. Thank you.

7 Okay. Now did you obtain real time crime
8 camera footage that's been discussed here during this
9 trial?

10 A. Yes, sir.

11 Q. Okay. And what was the location of that
12 camera footage?

13 A. It was right in the area of 152 East
14 Sharpnack Street.

15 Q. Okay. And is there a time offset of that
16 camera?

17 A. There's no time offset.

18 Q. Okay. So explain what that means.

19 A. There's no time offset.

20 Q. Okay. So explain what that means.

21 A. Sometimes with cameras in the city or in
22 general, security cameras, you'll have the real time
23 that is the current time right now in eastern time
24 zone, and then the camera will also have a time. That
25 time may or may not be accurate to the current time in

1 its time zone.

2 Q. Okay. But through -- you've learned that
3 with the real time crime cameras and real time crime
4 camera footage you obtained in this case, that is the
5 accurate time?

6 A. It is the accurate time. There is no
7 offset. They are both the same.

8 Q. Okay. Just one final line of questioning,
9 sir. Have you met with Mr. Ventura, the gentleman who
10 testified earlier during this case?

11 A. Yes, several times.

12 Q. Okay. And all the times that you met with
13 him, what language did he speak?

14 A. Spanish.

15 Q. How is it that you were able to communicate
16 with him?

17 A. Through an interpreter.

18 Q. Thank you.

19 MR. ECKERT: No further questions for
20 the witness.

21 THE COURT: Are there any questions on
22 cross?

23 MR. PATTERSON: Please, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. PATTERSON:

1 Q. Good afternoon, Agent.

2 A. Good afternoon. How are you?

3 Q. I'm doing well. Thank you.

4 You are the case agent in this case,
5 correct?

6 A. Yes, sir.

7 Q. That's why you had to sit here for the last
8 couple of days, right?

9 A. Yes, sir.

10 Q. However, as part of your responsibilities as
11 case agent you accumulate all of the evidence, all of
12 the police reports, any observations in written form
13 from any investigating officer; is that correct?

14 A. Yes.

15 Q. And most of the reports in the investigation
16 were actually completed by the Philadelphia Police
17 Department; is that correct?

18 A. That's correct.

19 Q. Even though we're in a federal courthouse in
20 a federal trial all of the observations and the
21 investigation was done by the Philadelphia Police
22 Department; is that correct?

23 A. Not all, but a majority.

24 Q. Majority. Correct. You -- I -- you were
25 responsible for the last four days of operating the

1 camera for the Government to put on the real time
2 capture video from the day in question; is that
3 correct?

4 A. Yes.

5 Q. So you're obviously acutely -- you're aware
6 and you have familiarity with all of the video feeds,
7 correct? You've been looking at them probably for a
8 while, right?

9 A. Yes.

10 Q. And you would agree with me that based upon
11 what -- and you reviewed all the video capture feeds
12 in preparation for today's trial, correct?

13 A. Yes.

14 Q. So not just what you -- we saw today.
15 You've been doing this as -- before the trial even
16 started, correct, reviewing all the videos?

17 A. Yes. That's correct.

18 Q. And, again, you're familiar -- you are very
19 familiar with what was depicted and what was captured
20 on March 22nd, 2019, correct?

21 A. Yes, sir.

22 Q. And we had also put up a photograph which
23 was actually a picture of the monitor that was in the
24 store. There was a monitor kind of smaller than that
25 that was in the store; is that correct?

1 A. The picture that you showed of --

2 Q. The screen with all the separate video feeds
3 in it from the store. Do you remember that? We
4 played it a couple of days ago.

5 A. Yeah.

6 Q. Okay. You would agree with me that there
7 was an outdoor pole camera -- strike that, not a pole
8 camera.

9 There was a camera associated with the store
10 itself pointing at the front of the store from across
11 the street, correct?

12 A. Yes. But that photo was taken just a month
13 ago, I think.

14 Q. You're right. But were you aware based upon
15 what you did see that there was a feed from an outdoor
16 source pointing at the front of the store?

17 A. Whenever that picture was taken, I could see
18 it in that picture that there was a camera.

19 Q. Okay. But you were aware based upon -- and
20 you talked to the police officers who prepared the
21 reports, correct?

22 A. Yes.

23 Q. And you are aware that there was a camera
24 capturing the outside of the store?

25 A. I've never seen footage from it. That was

1 -- I'm not -- I wasn't sure until we started the
2 investigation probably a month after the robbery.

3 Q. And that's my -- yeah. That's my next
4 question because obviously -- not obviously. What was
5 retrieved from the DVR, the digital video recorder,
6 that was all done by the police department. You had
7 no involvement in that, though, correct?

8 A. That's correct.

9 Q. Okay. And I'm sorry. That was -- you would
10 agree with me that what we've seen today and what you
11 saw in preparation of today, that these three
12 individuals were coming and going out of the store
13 while these events were occurring, correct?

14 A. Yes.

15 Q. Would you agree with me for purposes of
16 today and the testimony and what the jury has seen, it
17 would have been helpful if there was a video of what
18 was going on outside of the store because most of the
19 defendants were in and out of the store during this
20 time, correct?

21 A. Could have been.

22 Q. Right. Thank you.

23 MR. PATTERSON: Nothing further.

24 MR. WITTELS: Just a couple of
25 questions if I may.

1 CROSS-EXAMINATION

2 BY MR. WITTELS:

3 Q. Agent Orchulli, did you help prepare the
4 video that we saw several times here in court?

5 A. Yes.

6 Q. And that's an amalgamation of various
7 cameras, correct?

8 A. Yes, sir.

9 Q. And did you help make the decisions about
10 what was included and what was not included?

11 A. Yes.

12 Q. And you did that together with the
13 prosecutors?

14 A. Yes, sir.

15 Q. Thank you.

16 MR. ECKERT: Nothing further, Your
17 Honor.

18 MS. MEEHAN: Excuse me, Your Honor. If
19 we may have a moment to confer.

20 THE COURT: Are you finished with this
21 witness or don't you know?

22 MS. MEEHAN: Not yet, Your Honor.

23 THE COURT: All right. Go ahead.

24 (Pause)

25 MS. MEEHAN: No questions, Your Honor.

1 THE COURT: Any redirect? I don't
2 think so. We haven't heard any cross.

3 MR. ECKERT: No, Your Honor.

4 THE COURT: Yeah. Well, there was some
5 cross.

6 MR. ECKERT: No. I don't have any
7 redirect, Your Honor. Thank you. I just need to
8 consult with Ms. Meehan for one second, if I may.

9 THE COURT: Well, should we excuse the
10 witness or have --

11 MR. ECKERT: No. Yes. Absolutely.

12 THE COURT: -- let him sit there.

13 THE WITNESS: It's up to you, Your
14 Honor.

15 (Laughter)

16 THE WITNESS: It's up to you.

17 THE COURT: Well, it's not necessary
18 for you to remain here. You can step down.

19 THE WITNESS: All right. Thank you,
20 Your Honor.

21 THE COURT: Your testimony is
22 completed. Thank you.

23 (Pause)

24 MS. MEEHAN: Thank you, Your Honor.

25 MR. ECKERT: Is that okay?

1 MS. MEEHAN: Yes.

2 MR. ECKERT: May I?

3 Your Honor, there's one final
4 stipulation to read, if I may, to the jury.

5 THE COURT: You may.

6 MR. ECKERT: Thank you.

7 Ladies and gentlemen of the jury, the
8 Government and the Defendant, Mr. Quinn, agree and
9 stipulate that the Government determined Mr. Quinn's
10 identity when they received his bank records through a
11 grand jury subpoena.

12 Thank you.

13 MS. MEEHAN: So stipulated.

14 THE COURT: Thank you.

15 MR. ECKERT: May I just have one
16 moment? I believe we're finished.

17 (Pause)

18 MR. ECKERT: Right. We're not -- the
19 Government's not prepared to rest at this time based
20 on the discussions that have previously been had with
21 the Court and counsel. But we -- that is the last
22 witness.

23 THE COURT: And what you're saying is
24 the last witness is the next witness we will hear out
25 of the presence of the jury.

1 MR. ECKERT: Exactly, Your Honor.

2 Exactly.

3 THE COURT: Fine. Is there anything
4 else that we need to do today in the presence of the
5 jury?

6 MR. PATTERSON: I don't believe so from
7 Mr. Smith.

8 MR. WITTELS: No, sir.

9 MS. MEEHAN: No, Your Honor.

10 THE COURT: Well, what we must do is
11 give the jury some guidance as to when we're going to
12 finish. So I think we'll go to sidebar and talk about
13 it. We don't want to do it in open court.

14 (At sidebar)

15 THE COURT: The Government is finished.
16 What about the defense?

17 MS. MEEHAN: Well, Your Honor, I do
18 need to let the Court know I do have a written Rule 29
19 motion as to Count II and I would make an oral motion
20 under Rule 29, and I could file that as soon as we
21 return to the office.

22 THE COURT: All right.

23 MS. MEEHAN: After they rest, but they
24 haven't rested yet, so.

25 MR. PATTERSON: To address future

1 scheduling, I need some -- I need like at least an
2 hour and a half to two hours with my client on him
3 testifying or not. I'm trying to figure out when we
4 can fit that in. I mean, I leave my house at 6 a.m.
5 and get back at 8:00, so I'm just trying to --

6 THE COURT: I do, too.

7 MR. PATTERSON: Okay.

8 THE COURT: A little difference in our
9 ages, though.

10 (Laughter)

11 MR. PATTERSON: I know. I'm just
12 trying to figure out how I can -- I need some time,
13 definitely need some time with my client about this
14 testifying thing. I need to go over some stuff with
15 him.

16 THE COURT: It's going to be a late
17 night for you.

18 MR. PATTERSON: It's going to be I
19 think, or in the --

20 MS. MEEHAN: They won't let him in the
21 prison now, Your Honor.

22 MR. WITTELS: No. He -- they close it
23 down at seven. So he'll never get there.

24 THE COURT: Well, I understood that.
25 But the Court wasn't officially notified that the

1 prison was shut down. Does anyone know the reason?

2 MR. WITTELS: No. No. Every -- visits
3 end at seven.

4 THE COURT: No. I -- I understand the
5 prison is shut down during the day.

6 MS. MEEHAN: Restoring (indiscernible).

7 MR. WITTELS: Oh.

8 MS. MEEHAN: I don't know the reason,
9 Your Honor. I --

10 THE COURT: Yeah. I don't know if it's
11 open either.

12 MR. PATTERSON: I've been getting to
13 Philly every morning around 8:00 if I leave at six.
14 So if I see him from eight to ten, that would be
15 enough time for me, eight to 9:30, 10:00 to play it
16 safe.

17 THE COURT: All right. So we start
18 tomorrow at ten, maybe with this last Government
19 witness, maybe not.

20 What else do we have in the way of
21 evidence?

22 MR. WITTELS: Nothing from me.

23 THE COURT: And from you, Ms. Meehan?

24 MS. MEEHAN: I'm not certain. I don't
25 believe so.

1 THE COURT: Pardon me.

2 MS. MEEHAN: I don't believe that Mr.
3 Quinn will be testifying. I don't believe he will be
4 testifying. But --

5 THE COURT: Are you going to present
6 any other evidence?

7 MS. MEEHAN: No.

8 THE COURT: Then what you're saying, we
9 can proceed to closings tomorrow?

10 MR. WITTELS: Yes.

11 MR. ECKERT: It appears that way, Your
12 Honor.

13 THE COURT: What about the charge?

14 MS. MEEHAN: Well --

15 THE COURT: And deliberations.

16 MS. MEEHAN: When should we do that?
17 If we have time tomorrow, I guess.

18 THE COURT: I don't know if we'll have
19 time. That's what I'm trying to figure out. If we
20 start at ten --

21 MR. ECKERT: Our last witness will be
22 very brief, right, ten minutes, including the call.
23 If the Court were to rule -- obviously I know the
24 Court hasn't ruled. But if the Court were to rule, I
25 believe the Government's presentation would even be

1 done at 10:00 if it was, if the objection was
2 sustained, or we would be done at 10:10 if the
3 objection was overruled.

4 MR. PATTERSON: If we start at ten and
5 if my client testifies and then the 56 pages of jury
6 instructions and then the closings, I mean, that's
7 almost an entire day I would think. That's just --

8 THE COURT: Well, the question is
9 whether -- we can tell the jury we're likely to finish
10 tomorrow or tell them we're going to spill over until
11 Monday? I think we should tell them based on what
12 you're telling me --

13 MR. ECKERT: Yes.

14 THE COURT: -- that there's a
15 possibility we're spilling over --

16 MS. MEEHAN: Possibility.

17 MR. ECKERT: Possibly.

18 MS. MEEHAN: We can try not to, though.

19 MR. ECKERT: Right.

20 MR. WITTELS: We'll try not to, but it
21 may happen. It wouldn't be the worst thing to give
22 them an early afternoon if we have to. They would
23 probably appreciate it.

24 THE COURT: As opposed to coming back
25 on a Monday?

1 (Laughter)

2 MR. WITTELS: No. No. I just mean if
3 we can't do it all on Friday.

4 THE COURT: Oh, you're absolutely
5 right.

6 All right. I'll give them that advise.
7 We'll start tomorrow, everyone at ten. If I think
8 there's any need to gather sooner, I'll keep it --
9 well, we'll talk about it out of the presence of the
10 jury.

11 MR. PATTERSON: Thank you.

12 THE COURT: All right.

13 MR. ECKERT: Thank you, Your Honor.

14 MS. MEEHAN: Thank you, Your Honor.

15 (Sidebar concluded)

16 THE COURT: I have good news, I think.
17 I'll share it with you. The Government might have one
18 additional witness. I'm going to rule on the
19 admissibility of that witness's testimony tonight.
20 And so we'll know a little later tonight whether that
21 witness will testify. If the witness testifies, it
22 will be very brief and that will end the Government's
23 case.

24 Then the defendants have an opportunity
25 to present evidence. They don't have to, remember,

1 and you can't hold that against them because that is
2 their constitutional right. We'll know more about
3 that tomorrow.

4 But what I'm telling you is there is a
5 possibility that we will not finish tomorrow. There's
6 also a possibility, a little slim, that we will. We
7 have to finish the testimony, however much testimony
8 there is, then we have to have closing arguments and
9 my charge and your deliberations.

10 Right now there's a possibility that
11 we'll spill over, the trial will continue until
12 Monday. At most on Monday, based on what I've been
13 told today, you will have my charge and you will begin
14 deliberations. And I'll certainly have much more
15 definite advice on scheduling tomorrow. But for now
16 it's possible, underscore the word possible, that
17 we'll have to gather again on Monday.

18 I'm sure all of us had other plans. I
19 did. Those plans might have to be changed. And I'm
20 sure you understand. We've had a lot of problems
21 scheduling. You've been very understanding. I've
22 heard no complaints. I hope our breakfast finally got
23 to you. And one thing I can tell you, you're probably
24 eating better than the rest of us because we--

25 (Laughter)

1 THE COURT: -- there's not much time
2 left for us to grab anything to eat.

3 I'm going to let you go tonight.
4 Something has to be done by several of the attorneys
5 tomorrow morning, so we're going to start a little
6 later, 10:00 tomorrow. So you can sleep in a little
7 bit and you can get home a little earlier.

8 I'm not going to repeat all of the
9 instructions I've given you over and over again. But
10 just remember you must decide the case based solely on
11 the evidence received in the courtroom. You cannot
12 refer to anything that deals with the case that comes
13 from outside the courtroom.

14 Don't discuss the case among yourselves
15 and when that person or persons at home asks you what
16 you did today, where did you go out, what did you do,
17 nothing. And that's what you've got to tell them.

18 On that note, Mr. Cosgrove will excuse
19 you for the night. Leave your juror notebooks in the
20 jury room. We'll see you tomorrow morning, 10:00.

21 THE COURT OFFICER: All rise.

22 (Jury out)

23 THE COURT: Be seated, everybody.

24 Let's talk about who should be present
25 during these proceedings. We're going to start with

1 the -- we'll probably have some introduction, but
2 we're going to address issues related to the 911 call
3 and specifically the tape of the call. I believe it's
4 exhibit, Government Exhibit 5-B. So we'll hear the
5 testimony out of the presence of the jury and then
6 I'll hear argument and decide whether that call comes
7 in to evidence.

8 Then we're going to address -- well,
9 there's one question with respect to the charge that
10 was raised by Ms. Meehan that we'll address. But
11 we'll address all charge related issues.

12 Are there any issue, other issues you
13 anticipate presenting this afternoon or what's left of
14 the afternoon?

15 Government first.

16 MR. ECKERT: I don't know of any, Your
17 Honor.

18 THE COURT: Mr. Patterson.

19 MR. PATTERSON: One minute, Your Honor.

20 (Pause)

21 MR. PATTERSON: Since I'm not certain
22 whether my client will be testifying, I'm assuming he
23 will be, but if he does testify then I would, with the
24 permission of Ms. Meehan, utilize her motion in limine
25 for impeachment with prior conviction pursuant to Rule

1 609.

2 THE COURT: I'm sorry.

3 MR. PATTERSON: I would be arguing that
4 my client's prior conviction not come in based upon --

5 THE COURT: Oh, we're going to address
6 the motions in limine.

7 MR. PATTERSON: Okay.

8 THE COURT: Ms. Meehan asked that that
9 be done. I --

10 MR. PATTERSON: Oh, I'm sorry.

11 THE COURT: -- I forgot that. And I
12 will. I'll -- while I'm at it I'll rule on -- the
13 motion applies to all defendants.

14 MR. PATTERSON: Yes.

15 THE COURT: And I'll rule with respect
16 to all defendants.

17 MR. PATTERSON: Thank you, Your Honor.

18 THE COURT: All right. Now the
19 question is, is the presence of the defendants
20 necessary? And if it's not necessary, they still have
21 a right to participate, but discuss that with the
22 defendants and let me know what you want to do. We'll
23 have to advise the marshals.

24 MR. PATTERSON: We're doing the 911
25 stuff today, correct?

1 THE COURT: We're doing the out of the
2 presence of the jury presentation --

3 MR. PATTERSON: Right.

4 THE COURT: -- on that issue tonight --

5 MR. PATTERSON: Okay.

6 THE COURT: -- first.

7 MR. PATTERSON: It would be my
8 intention, then, to assist the Court in determining
9 whether that 911 call should come in to be -- to have
10 my client be permitted to read something to Your Honor
11 so Your Honor can get the cadence and the tone of his
12 voice to help determine whether or not the call, what
13 you're going to hear that's purported to be Donnie
14 Smith as opposed to what Your Honor is going to hear
15 with respect to, again, the tone and timber of his
16 voice.

17 THE COURT: I guess we can do that. We
18 can have that part of the trial out of the presence of
19 the jury. And if I decide the 911 call is admissible,
20 you could present him tomorrow as a witness in your
21 case. Is that what you contemplate?

22 MR. PATTERSON: If he doesn't --

23 THE COURT: Well, he doesn't have to.

24 MR. PATTERSON: I understand. I
25 understand, Your Honor. If Your Honor permits the 911

1 tape to play, and if my client does not testify, I
2 would still -- I've got to think about this. But I
3 believe that the jury should be allowed to hear his
4 voice before they hear the tape and then they can make
5 their own call with respect to whether it's him or
6 not.

7 So I would have him stand up for the
8 limited purpose of reading something to the jury to
9 help them assist to whether or not that tape --
10 because there's no voice recognition expert. And,
11 again, I'll address that in my closing for the weight
12 argument.

13 But, again, I think the juror should be
14 able to hear my client when they hear the video -- the
15 911 tape, if the 911 tape comes in. And, again, it
16 would be for the limited purpose of my client
17 providing a voice sample to the jury.

18 THE COURT: So what you're saying is
19 your client would not testify. He would just stand up
20 and --

21 MR. PATTERSON: Right. If he does not
22 testify, then that's how I wish to handle that if the
23 911 tape comes in.

24 THE COURT: All right. Does the
25 Government have a position with respect to that

1 procedure?

2 MS. MARTIN: Your Honor, all I can say
3 is I've never heard of that procedure. I don't think
4 a voice recognition expert would even be admissible in
5 court. And this evidence then can't be cross-examined
6 in any way. Can I then use jail calls that I have of
7 the defendant to say that it's closer to his voice. I
8 don't know how I could cross-examine that evidence if
9 I can't -- I would like more time to think about it,
10 Your Honor.

11 MR. PATTERSON: And, of course, I -- at
12 the appropriate time I would object because we're --
13 this entire jury up until trial I've been trying to
14 keep from the jury that my client, one, is a convicted
15 felon and, two, that he's in jail, ergo the street
16 clothes.

17 I believe just a voice sample of him
18 talking, why would they need to cross-examine that?

19 THE COURT: Do you have any authority
20 for that proposition --

21 MR. PATTERSON: I don't.

22 THE COURT: -- in a case where
23 someone's voice is at issue?

24 MR. PATTERSON: Right. I don't -- I do
25 not. I hopefully could get authority for you

1 tomorrow.

2 THE COURT: Well, is there any
3 objection -- see, we don't -- we're not before the
4 jury right now. Is there any objection to my hearing
5 his voice?

6 MS. MARTIN: No, Your Honor. I think
7 the circumstantial evidence speaks for itself and I
8 would argue there's limited weight to the defendant
9 standing up and talking for Your Honor. In the same
10 way that I can change my handwriting, I can change my
11 voice right now. I'm not sure how that's relevant.

12 THE COURT: I'm not going to ask you to
13 do that.

14 MS. MARTIN: Okay.

15 THE COURT: Well --

16 MS. MARTIN: I'm happy to make argument
17 on it, Your Honor.

18 THE COURT: But you're right. And --
19 but I'm just trying to think how Mr. Patterson can
20 present me with any authority for his position that --
21 in a case like this it's relevant for the defendant to
22 say something in open court so the fact finders can
23 use that as additional evidence that the voice on a
24 tape is not --

25 MS. MARTIN: Right.

1 THE COURT: -- the voice of the
2 defendant.

3 MS. MARTIN: I think there is a remedy.
4 I think he needs to testify and say that's not my
5 voice. And then I get to cross-examine him on that.

6 THE COURT: Mr. Patterson, that might
7 be my ruling. I'm not sure.

8 MR. PATTERSON: I think --

9 THE COURT: I can tell you that I've
10 been on the bench for quite some time. I haven't had
11 this issue before. And I've had voice related issues
12 before, but never anything like this.

13 MR. PATTERSON: I believe if they want
14 to cross-examine him, would the scope of the -- if he
15 decides not to testify in the case in chief with
16 respect to what happened on March 22nd of 2019, what's
17 the scope of the cross-examination: Are you
18 disguising your voice right now? Is that your real
19 voice?

20 I -- if it -- if the 911 call is
21 admissible and there is a distinct difference between
22 the sound of the person on the tape as opposed to my
23 client's voice, then I think it's relevant for that
24 limited purpose.

25 THE COURT: Well, there is -- again,

1 the rule on the 911 call is set forth in two cases.
2 And I think what we'll do is get into this later. You
3 see, as has happened frequently during the trial, my
4 question was deflected. I had a simple question for
5 you, Mr. Patterson, and it relates to whether -- we're
6 talking about whether it's appropriate or necessary,
7 either one, for your client to remain now after --

8 MR. PATTERSON: Oh.

9 THE COURT: -- we've excused the jury.
10 That was the question. We'll decide the procedure and
11 what's going to be done after we hear the call all
12 tonight.

13 MR. PATTERSON: Oh, I misunderstood.
14 He --

15 THE COURT: Do you want --

16 MR. PATTERSON: He does not need to be
17 present. He does not need to be present.

18 THE COURT: Well, if I'm going to --

19 MR. WITTELS: My client does not need
20 to be present.

21 THE COURT: Well, I'm sure Mr. Wittels
22 -- go ahead, Mr. Wittels.

23 MR. WITTELS: He doesn't have to -- my
24 client does not need to be present.

25 THE COURT: And Ms. Meehan?

1 MS. MEEHAN: No, Your Honor.

2 THE COURT: No, wait a minute. No,
3 your client does not --

4 MS. MEEHAN: No, he does not need to be
5 present.

6 THE COURT: -- need to be present.
7 Well, if you're going to have your client speak, read
8 something, he certainly has to be present. I'm not
9 going to be able to hear him from the detention
10 center.

11 MR. PATTERSON: I know. I just thought
12 maybe after if Your Honor is going to -- you're right.
13 I thought we were going to address some preliminary
14 issues and then get to my client. But I understand,
15 Your Honor.

16 THE COURT: What, you mean tonight?

17 MR. PATTERSON: Yes. Yes.

18 THE COURT: No. We're going to do this
19 -- the preliminary issue is what we're talking about
20 now. The first issue on the agenda is the 911 call.

21 MR. PATTERSON: I understand. So, yes,
22 if -- yes. For the voice sample then I would think he
23 would have to remain.

24 THE COURT: Although I'm not certain
25 that's admissible.

1 MR. PATTERSON: Correct.

2 THE COURT: Now how are we going to get
3 authority on that?

4 MR. PATTERSON: I'm a one man show, so
5 I would have to try to get some case law for Your
6 Honor or something.

7 THE COURT: All right. And we'll
8 research it as well.

9 Right now I'm going off the bench for
10 15 minutes. I think we'll excuse -- who is the senior
11 marshal? You moved and I couldn't find you.

12 We'll recess for 15 minutes.
13 Defendants Stevens and Quinn are not going to remain
14 in the courtroom. Defendant Smith will, but not for
15 the entire evening proceeding. He'll be here only for
16 the first part of the proceeding dealing with the 911
17 call. Can you handle that?

18 THE DEPUTY: Yes, sir.

19 THE COURT: All right. I'm going to
20 recess then for 15 minutes. Again, Stevens and Quinn
21 need not remain. Smith must remain.

22 THE COURT OFFICER: All rise.

23 (Recess taken at 4:47 p.m.; reconvened at 5:11
24 p.m.)

25 THE COURT: Be seated, everyone.

1 We've done some research --

2 MR. WITTELS: Judge, if --

3 THE COURT: -- on the issues raised in
4 Mr. Patterson --

5 MR. WITTELS: -- may I step out and see
6 Mr. -- get Ms. Meehan?

7 THE COURT: Yes, Mr. Wittels.

8 MR. WITTELS: Ms. Meehan's not here.
9 I'll --

10 THE COURT OFFICER: I think he's --

11 MR. WITTELS: Okay. The marshal's
12 getting her.

13 MR. PATTERSON: While we're waiting for
14 Ms. Meehan, I think we can streamline this. I am
15 curious about what Your Honor came up with, but I
16 don't think it's going to be necessary with what we're
17 going to do.

18 THE COURT: That's been true of most of
19 what has happened vis-à-vis your client today.

20 MR. PATTERSON: I understand, Your
21 Honor.

22 THE COURT: All right. We're all here.
23 Tell me what you wanted to report.

24 MR. PATTERSON: Thank you.

25 I -- the marshals provided me the

1 opportunity to speak with my client in the holding
2 cell back off the courtroom. I explained to him what
3 we would be doing. I explained to him the
4 significance or insignificance of this 911 call should
5 it come in. I told him that if the 911 call does come
6 in, that I would still be able to argue weight to the
7 jury. However, I can argue or I would intend to argue
8 to the jury in the alternative that assuming it is
9 him, it still fits into his -- my theory of this case
10 as it pertains to him at Sharpnack on the day in
11 question. It will not impact, this 911 call will not
12 impact my theory of the case.

13 Based upon that conversation with my
14 client, and after having total understanding of
15 whether it comes in or it doesn't come in, he told me
16 that he would be okay. He would not object to me
17 withdrawing my objection to the 911 tape coming in.
18 And, again, not stipulating that it is his voice, but
19 I still would retain the right to argue to the jury as
20 to weight.

21 So, in short -- shorthand, we're going
22 to withdraw the objection on admissibility of the 911
23 tape.

24 MS. MARTIN: Your Honor, if I just may
25 place one thing on the record. Just while we were

1 taking this short break I also played the additional
2 dispatch conversation that happens after the 911 call
3 for both Mr. Patterson and Mr. Smith. It is my
4 understanding at that time -- at this time that
5 there's no objection to those communications either.

6 MR. PATTERSON: There -- there's -- no.
7 Right. There would come in with all the 911
8 recordings. And if I could just colloquy my client
9 very quickly, Your Honor. He kind of wants to get
10 back.

11 Mr. --

12 THE COURT: Yes, you may.

13 MR. PATTERSON: I'm sorry.

14 THE COURT: You asked a question and
15 then you proceeded without --

16 MR. PATTERSON: Oh, I'm sorry.

17 THE COURT: -- getting an answer.

18 MR. PATTERSON: If I may colloquy him.

19 THE COURT: You may colloquy your
20 client.

21 MR. PATTERSON: Thank you.

22 If you could stand up, Mr. Smith.

23 Now, Mr. Smith, you were here when I
24 told His Honor with respect that it was my intent to
25 withdraw the objection on the admissibility of the 911

1 tape; is that correct?

2 DEFENDANT SMITH: Yes.

3 MR. PATTERSON: And you had ample
4 opportunity to discuss this issue with me back in the
5 holding cell; is that correct?

6 DEFENDANT SMITH: Yes.

7 MR. PATTERSON: And I told you that
8 it's my opinion, even though you -- your decision
9 rules, that I don't believe if it does come in it
10 would hurt your theory of the case insofar as what
11 transpired on the day in question; is that correct?

12 DEFENDANT SMITH: Yes.

13 MR. PATTERSON: And you would agree
14 with me in the withdrawal of my objection for the
15 admissibility of the 911 tapes, correct?

16 DEFENDANT SMITH: Yeah.

17 MR. PATTERSON: And also that I reserve
18 -- I would reserve and would still have the
19 opportunity to argue weight, meaning to argue to the
20 jury that it may or may not be you. Do you understand
21 that?

22 DEFENDANT SMITH: Yeah.

23 MR. PATTERSON: Are you okay with that?

24 DEFENDANT SMITH: Yes.

25 MR. PATTERSON: Any questions of me or

1 His Honor?

2 DEFENDANT SMITH: No, sir.

3 THE COURT: Thank you.

4 Do you have any questions for the
5 Court, Mr. Smith?

6 DEFENDANT SMITH: No, sir.

7 THE COURT: There's really no need for
8 me to rule, but I am going to point out that under the
9 case law and the cases that we found, Fitzpatrick
10 versus United States, 178 -- I'm sorry. Wrong case.
11 United States versus Murdock, 699 Fed. 3d. 665, a 2012
12 decision from the First Circuit in Boston and a Third
13 Circuit case, United States versus Console and others
14 (phonetic), 13 F.3d 641., a 1993 case, the tape would
15 come in if there were sufficient circumstantial
16 evidence and direct recognition of the person alleged
17 to have made the call.

18 I believe there was sufficient
19 evidence, circumstantial evidence among other things,
20 and I'm not detailing it all, the exchange of
21 telephone calls between the challenged number and your
22 wife, Mr. Smith, number one, and self-identification
23 because of some of the things that were said in the
24 call that link the caller to you. There was
25 sufficient evidence for me to rule. I'm not having to

1 rule now, but there was sufficient evidence for me to
2 rule that it was your call and it was your voice.

3 So I don't think anything has been
4 conceded that would not have been the subject of my
5 ruling.

6 MR. PATTERSON: Thank you, Your Honor.

7 THE COURT: Is there anything else that
8 needs to be put on the record at this time?

9 MS. MARTIN: Not from the Government,
10 Your Honor.

11 THE COURT: And not from your
12 perspective?

13 MR. PATTERSON: No, Your Honor. I
14 would just request that my client be permitted to go
15 back to FDC.

16 THE COURT: Yes. Mr. Smith will be
17 permitted to return to the FDC. We're going to resume
18 tomorrow at 10:00, Mr. Smith.

19 (Pause)

20 THE COURT: I should also tell you we
21 found another case, an older case, the case I started
22 to cite, Fitzpatrick versus the United States, it's a
23 Supreme Court case, 178 U.S. 304. I haven't cited a
24 case that old in a while. It was decided in 1900.
25 But it is authority for the proposition that Mr. Smith

1 would not have been permitted to stand up and give a
2 sample of his voice. He would have been permitted to
3 take the witness stand, of course, and testify in
4 whatever manner he deemed appropriate under the rules,
5 but no stand up sample of voice.

6 Okay. On that note, have you excused
7 the 911 operator?

8 MS. MARTIN: I just did, Your Honor.
9 She'll be back tomorrow morning first thing.

10 THE COURT: All right. We certainly
11 don't need her out of the presence of the jury.

12 All right. Now I would rather start
13 with the charge and end with the motions in limine.

14 (Pause)

15 THE COURT: All right. You've all
16 received the revised charge. We covered everything
17 through -- well, we -- there were a lot of things we
18 were coming back to. But essentially one of the -- I
19 guess where we have to address issues begins with --

20 (Pause)

21 THE COURT: Okay. It's Section 27, and
22 that's the Pinkerton charge.

23 Now I know one objection to the charge
24 that we haven't completely discussed that comes before
25 that, and that's -- hmm -- oh, yes, it's Count 2,

1 using or carrying. It's after the Pinkerton charge
2 and it's the aiding and abetting charge there. So
3 we'll address those in whatever order you deem
4 appropriate.

5 And, Ms. Meehan, it's your objection to
6 the aiding and abetting charge with respect to Count
7 II.

8 MS. MEEHAN: Yes. Your Honor, I think
9 Your Honor surmised from numerous arguments throughout
10 the case that this instruction in particular is
11 critical to Mr. Quinn's defense and it's critical that
12 the jury understand aiding and abetting, and that it's
13 clear to them what actions and what evidence the
14 Government must prove in order for the jurors to find
15 Mr. Quinn, who was unarmed, was an accomplice or had
16 accomplice liability and aided and abetted the using
17 and carrying and brandishing, of significance
18 brandishing a gun --

19 THE COURT: Well, brandishing --

20 MS. MEEHAN: -- in connection with a
21 crime of violence.

22 THE COURT: Brandishing is not part of
23 the -- is not an element of the charge. It will be on
24 the verdict sheet, but brandishing is a sentencing
25 issue.

1 MS. MEEHAN: Well --

2 THE COURT: The only thing the
3 defendant has to be concerned about is using or
4 carrying.

5 MS. MEEHAN: Well, I respectfully
6 disagree with the Court and I would add, Your Honor,
7 just to clarify things. And I mean no disrespect to
8 the Court, but because the -- this instruction is
9 confusing, and I understand what the Court said the
10 other day about the Bozeman (phonetic) case having
11 been decided six years ago, although for many, many
12 years, Your Honor, we treated the guidelines as
13 mandatory before 2005.

14 The Chief of Appeals for the U.S.
15 Attorney's Office, Mr. Zalsner (ph), I don't want to
16 speak for Mr. Zalsner, but he spoke to the Appellate
17 Chief of the Defend -- the Federal Defender Officer,
18 Mr. Swietzer (ph) and they were both on the advisory
19 committee for the Third Circuit model -- jury
20 instructions. And they -- we're trying to propose a
21 joint instruction for the Court.

22 And I would hand it up. I just -- I
23 want to apologize to the Court in advance because when
24 I was rushing this morning I mislabeled what the
25 Government -- we're not 90 percent of the way -- 90

1 percent of the instructions we agree on. There's one
2 paragraph which I highlighted that appears in the
3 Government's proposal. And the only reason that I did
4 not want that paragraph in for Mr. Quinn, and it
5 pertains to if the defendant continues to participate
6 in a crime after a gun was displayed or used by
7 confederate:

8 "You may permissibly infer from the
9 defendant's failure to object or withdraw from the
10 crime at that time that he had advance knowledge of
11 the confederate's plan. You're not required to draw
12 this inference, however. It is entirely up to you to
13 determine the facts."

14 And I just think this unduly singles
15 out or over-emphasizes --

16 THE COURT: Now where is that in my --

17 MS. MEEHAN: -- certain evidence.

18 THE COURT: -- charge?

19 MS. MEEHAN: Well, that -- I'm going to
20 hand this up to the Court. And, again, I --

21 THE COURT: That's -- I don't think
22 that is in my charge.

23 MS. MEEHAN: No, it's not. And I
24 think --

25 THE COURT: And do you think that's

1 helpful to Mr. Quinn? You may -- well, I guess you
2 do.

3 MS. MEEHAN: No. I don't think it's
4 helpful, Your Honor. And -- but as I was mentioning,
5 I think that our proposed -- the jointly proposed
6 instructions, either way, I think are clear or more
7 helpful to the jury than the current Third Circuit
8 instruction. So I'm -- and I gave a copy to
9 Government counsel and I'll hand this up to the Court.
10 And I --

11 THE COURT: And this is in place of
12 what charge?

13 MS. MEEHAN: The accomplice liability,
14 aiding and abetting.

15 THE COURT: Yeah. But there's a lot of
16 that. Which one?

17 MS. MEEHAN: As it pertains to the
18 924(C), Count II. So that would be the Court's -- if
19 I could just have a moment. Sorry. That would be a
20 proposal to replace the Court's instruction which is
21 -- sorry, Your Honor -- Number -- it would be Number
22 38, page 47.

23 THE COURT: That's where I am. My
24 instruction reads first that someone -- we didn't --
25 this hasn't been changed as I directed that it be

1 changed, including one of them. It has to be one of
2 the defendants. That someone, including one of them,
3 one of the defendants -- we would insert that, and
4 we've been identifying them by name -- committed each
5 of the elements of the offense charged as I explained
6 those elements to you.

7 Now we're going to make that more
8 clear. The offense charged there would be using or
9 carrying a firearm during a crime of violence. So
10 that will read if I it -- if I sign off on this,
11 first, that one of the defendants, including the --
12 that -- first, that it would be consistent with
13 everything else. Smith, Stevens and Quinn, or one of
14 them committed the offense charged, and the offense
15 charged then would be explained, using and carrying a
16 firearm during a crime of violence by committing each
17 of the elements charged as I have explained those
18 elements to you.

19 Second, that Smith, Stevens and Quinn
20 knew that the offense charged was going to be
21 committed or was being committed by someone, including
22 one of them, and there the one of them works because
23 we've identified Smith, Stevens and Quinn in the -- at
24 the beginning of the element.

25 MS. MEEHAN: Your Honor, I'm sorry to

1 interrupt. Are -- is Your Honor rejecting the joint
2 proposal from --

3 THE COURT: I'm reading what I -- what
4 is in there now.

5 MS. MEEHAN: Okay. I --

6 THE COURT: Yes. It would have been
7 good, not required, but it would have been good to --
8 for you to have given me these. I think this is
9 essentially what you have in your points, but I'm not
10 sure.

11 MS. MEEHAN: Well, it's actually
12 slightly different. But this would be -- and for now
13 I'll just -- I'll agree with the Government proposal
14 and that paragraph can stay in --

15 THE COURT: I don't know what paragraph
16 --

17 MS. MEEHAN: -- on the second page.

18 THE COURT: -- you're talking about
19 now.

20 MS. MEEHAN: Your Honor, I handed up,
21 and I apologize to the Court.

22 THE COURT: You interrupted.

23 MS. MEEHAN: I did.

24 THE COURT: I'm now reviewing my charge
25 now. Why you thought that was an appropriate time to

1 interrupt escapes me.

2 MS. MEEHAN: Because I think Your
3 Honor's charge is really confusing with this set of
4 facts because there is money and a gun charge, but
5 it's the store gun in Count I. And Mr. Quinn doesn't
6 have the gun, but Mr. Quinn touches money and then --
7 I mean, it's a -- the fact pattern is a quick fact
8 pattern, but it's very confusing under the law with
9 who the principles are and who the aider and abettors
10 are and what the jury can --

11 THE COURT: Well, the jury has -- if
12 the Government --

13 MS. MEEHAN: -- can reasonably find.

14 THE COURT: -- is going to proceed on
15 this charge, and they certainly can, they've got to
16 argue this and make it clear to the jury. Yes, it's a
17 very unusual fact pattern.

18 MS. MEEHAN: It is and that's why I
19 think because the Third Circuit model instruction
20 remains confusing and is flawed, and I think the
21 Government agreed -- agrees with that, which is why
22 I'm submitting a joint proposal --

23 THE COURT: Oh, a joint proposal?

24 MS. MEEHAN: Yes, it's a joint
25 proposal.

1 MR. ECKERT: Yes, Your Honor.

2 MS. MARTIN: Yes, Your Honor. It's a
3 joint proposal and the -- I believe what was just
4 handed up --

5 MS. MEEHAN: Yes. It's -- I'm just
6 going to agree with yours.

7 MS. MARTIN: Okay. Your Honor, it
8 sounds like there is an agreement between counsel that
9 the instruction as written with the highlighted
10 paragraph that's just been handed up to you is a joint
11 request from the two of us.

12 MS. MEEHAN: And I had to hand --

13 THE COURT: Well, first of all --

14 MS. MEEHAN: -- correct it.

15 THE COURT: -- my -- I've got two
16 typewritten pages. One is titled, Defendant's
17 proposed jury instructions and then Defendant is
18 crossed out and Government is written in. The other
19 one is entitled, Government's proposed jury
20 instructions and Defendant is written in over the term
21 Government which is crossed out.

22 There was no suggestion that it was a
23 joint proposal. And you interrupted my reading of the
24 current charge. I want to start where we are now --

25 MS. MEEHAN: I apologize --

1 THE COURT: -- which is the current
2 charge, which is the Third Circuit charge. Your
3 interruption isn't getting you anywhere.

4 MS. MEEHAN: I apologize, Your Honor.
5 I just -- I --

6 THE COURT: Then it's down.

7 MS. MEEHAN: -- thought I made it clear
8 that we had a joint proposal for that. So I --

9 THE COURT: You didn't tell me --

10 MS. MEEHAN: -- apologize.

11 THE COURT: -- that. You were on your
12 feet for a good bit of time and neglected to tell me
13 something that was rather important, that we have an
14 agreement with the Government.

15 You're right. This is the first time
16 you've tried before me, Ms. Meehan.

17 The third element that either Smith,
18 Stevens or Quinn was an active participant in the
19 using and carrying of a firearm during a crime of
20 violence and also had advance notice that one of the
21 principals would use a firearm during and in relation
22 to the crime of interference with interstate commerce
23 by a robbery, and they then performed some act in
24 furtherance of the crime.

25 Now what is the joint proposal?

1 There's a fourth element, by the way. Well, we don't
2 have to go into it. It's not being challenged. What
3 is the joint proposal?

4 MS. MEEHAN: Your Honor, I made the
5 mistake when I -- Mr. Zalsner and our Chief of Appeals
6 were 95 percent in agreement with the exception of the
7 highlighted paragraph which is now hand-corrected to
8 say Government. I did not want that paragraph in
9 there for Mr. Quinn. But at this point I am happy to
10 have this instruction if Your Honor would agree to it,
11 which would be -- and I've hand-corrected.

12 It says typed, Defendant's proposed
13 jury instruction for accomplice liability aiding and
14 abetting. But I crossed that off and said,
15 Government, and it's got first, second and third
16 element, and then there's a paragraph about continued
17 participation, and then the second to last paragraph
18 says, the Government, on page 2, need not prove that
19 the defendant desired that Mr. Stevens or Mr. Smith
20 used, carry or brandished.

21 And the reason brandishing is
22 important, Your Honor, is because there is a Seventh
23 Circuit case, United States versus Armour, A-R-M-O-U-
24 R, 2016, so it's post-Roseman, 840 F.3d. 904. So that
25 Mr. Quinn must know that -- must have advance

1 knowledge of brandishing, not just use and carry.

2 That was what that case stood for.

3 So this would be a joint proposal, and
4 at this juncture I'll agree to include all three
5 paragraphs on page 2.

6 THE COURT: Well, the advance knowledge
7 issue is covered in the charge that I've proposed.
8 It's covered -- well, I won't read the whole
9 paragraph. It's on page 51 and it reads, to find that
10 Donnie Smith, Stevens and Quinn had advance knowledge
11 that one of the principals would use or carry a
12 firearm during and in relation to the interference
13 with interstate commerce by robbery. You must find
14 that the Government proved that Smith, Stevens and I'm
15 -- I think maybe we should use the disjunctive, or
16 Quinn, had knowledge of the firearm at a time when
17 they could do something with that knowledge such as
18 walking away from the criminal venture.

19 That's the issue that you seem to be
20 talking about and it's in there, and it was in the
21 Roseman --

22 MS. MEEHAN: No, Your Honor. This was
23 actually continued participation I had an issue with.
24 But the reason --

25 THE COURT: I'm sorry. What are you

1 talking about now?

2 MS. MEEHAN: The continued
3 participation. There is a paragraph that addresses
4 advance knowledge here. Your Honor, the reason that
5 this was jointly submitted was both the Government and
6 the defense both chiefs of appeals of our two offices
7 have been working and re-evaluating the accomplice
8 liability instruction as it pertains to the 924(C)
9 statute. And because it's very confusing, and I
10 think it's already confusing in a case that it might
11 not be as factually complex as this one in terms of
12 who is responsible for what.

13 And with the facts of this case being,
14 I would suggest to the Court extraordinarily
15 confusing, that this proposal, joint proposal would be
16 very helpful and is a very clear instruction for the
17 jurors.

18 THE COURT: Some of -- I haven't read
19 the whole thing because you didn't think it was
20 important enough to give me a copy in time to read
21 before the hearing. But I'm reading on the last page,
22 next to last paragraph. The Government need not prove
23 that the defendant desired that Stevens or Smith use,
24 carry -- and you're not -- this is a charge for three
25 defendants, or brandish a firearm. And the

1 brandishing is not -- again, it's not a part of the
2 using or carrying. The brandishing reference is only
3 in the charge for sentencing purposes. It's not part
4 of 924(C).

5 By why isn't the Third Circuit
6 instruction, which has been in place for, let's see,
7 2014, for six years, five and a half years, why isn't
8 that sufficient? Why isn't the language that I use --

9 MS. MEEHAN: Because it's very --

10 THE COURT: -- giving the defendant an
11 opportunity to withdraw?

12 MS. MEEHAN: Because, Your Honor, the
13 instruction was written prior to the Roseman case, and
14 since that time there have been suggestions and
15 additions, and it's only made the jury instruction
16 more confusing.

17 So it's being worked on currently as we
18 speak by the committee, by this advisory committee,
19 and Mr. Zalsner and Mr. Swietzer of my office are part
20 of this advisory committee. And I don't know who else
21 is on it. It's apparently on the website, the list of
22 individuals. But Mr. Swietzer and Mr. Zalsner spoke
23 at length yesterday and went back and forth in writing
24 as to a proposed instruction and a jointly proposed
25 instruction. And, again, I'll just agree with the

1 Government's version for purposes of this case; that
2 we can agree that this instruction from both of the --
3 from both of our offices have crafted is a clearer
4 instruction on accomplice liability than the current
5 Third Circuit instruction.

6 THE COURT: Well, it's nice the lawyers
7 agree. It's certainly not binding on me and I'm not
8 going to --

9 MS. MEEHAN: Of course not, Your Honor.
10 I understand.

11 THE COURT: With the major changes.
12 First of all, I need to read it. I can't believe
13 you're presenting this in the way you're presenting
14 it, Ms. Meehan. I mean --

15 MS. MEEHAN: Your Honor, I wanted to
16 change the -- I did not realize that the caption was
17 wrong, that I had it in the reverse.

18 THE COURT: Well, Ms. Meehan, the last
19 thing I'm complaining about is the caption. You gave
20 me a rather detailed charge. We're supposed to close
21 the case tomorrow. We probably won't. And you want
22 us to digest this charge. I don't know how long
23 you've held onto it. If you hung onto it for an hour,
24 it was too long.

25 MS. MEEHAN: Well, I certainly had it

1 since mid-morning, Your Honor. Yes.

2 THE COURT: Well, you should have --
3 well, I gather this is an ongoing process. But I'm
4 not really prepared tonight to rule on this charge. I
5 find this issue as applied, the issue of aiding and
6 abetting as applied to this case rather, well, I'll
7 say difficult. It's not an easy fit. But I know the
8 elements of the crime and I'll charge the jury in a
9 way that I think communicates to them the essence of
10 the law and the elements as they're -- as they need to
11 be presented. But I can't do that tonight. You
12 waited too long.

13 Does the Government want to say
14 anything on this issue?

15 MS. MARTIN: No, Your Honor. I agree
16 it is a joint proposal and I understand the Court's
17 ruling.

18 THE COURT: And have you checked this
19 language? I mean, there's a lot of -- there are a lot
20 of words the courts don't use very often. For
21 example, you must establish -- and it's written for
22 Quinn. It's not written for the Court. We're talking
23 about points for charge for the three defendants.

24 MS. MARTIN: Your Honor, I will note I
25 did just notice that. It was written by Mr. --

1 THE COURT: Quinn's attorney. Well,
2 someone wrote it for Quinn's attorney. But it -- what
3 that sentence reads is, how it reads is what it must
4 prove beyond a reasonable doubt is that Mr. Quinn knew
5 beforehand at a time when he had a realistic
6 opportunity to quit the robbery that the principal
7 would use, carry or brandish the firearm. And Mr.
8 Quinn elected thereafter to continue to participate in
9 it.

10 MS. MEEHAN: But he's the only one
11 unarmed, Your Honor. So the accomplice liability on
12 the 924(C) would have to apply to him and not to Mr.
13 Stevens and Mr. Smith.

14 MS. MARTIN: Your Honor, I disagree
15 with that insofar as it would apply to the store gun
16 in terms of aiding and abetting, the robbery of the
17 store gun.

18 THE COURT: Well, did --

19 MS. MEEHAN: That's Count I.

20 THE COURT: -- did Quinn -- I'm trying
21 to refresh my recollection. Did he touch any of the
22 other guns?

23 MS. MARTIN: He took the gun from Mr.
24 Stevens at the end, Your Honor.

25 THE COURT: That was when Stevens was

1 leaving?

2 MS. MEEHAN: Well, that -- Your Honor,
3 we have a stipulation that -- because Government, I
4 thought, was a little bit tricky with exhibits there.
5 This was the issue that came up when Ms. Martin asked
6 Mr. Ventura, did you ever see the gun again, and then
7 there was a video of Mr. Quinn -- Mr. Stevens handing
8 his gun to Mr. Quinn. That was Mr. Stevens' gun and
9 we have a stipulation before this jury that that was
10 not the store gun.

11 MR. ECKERT: Right. And we're --

12 MS. MEEHAN: Right. So --

13 MR. ECKERT: A hundred percent.

14 MS. MEEHAN: So the accomplice
15 liability for Mr. Quinn is on the guns -- I'm assuming
16 it's the Government theory -- is on the guns that Mr.
17 Stevens and Mr. Smith had. The store gun and this
18 theft or robbery of the store gun is Count I and there
19 is an instruction in Your Honor's instructions. I
20 haven't objected to that. That -- I don't know what
21 number offhand, but there's already an instruction for
22 that for Count I. We're talking about Count II.

23 (Pause)

24 THE COURT: Well, the question I asked
25 was did Quinn ever touch -- what weapons -- well,

1 maybe I ought to put it this way. What weapons did
2 Quinn have his hands on?

3 MR. ECKERT: The only weapon that he
4 touched is the store gun. That's absolutely factually
5 correct.

6 MS. MEEHAN: What? The store gun?

7 MR. ECKERT: I'm sorry. I meant -- I'm
8 sorry.

9 MS. MEEHAN: Oh, sorry.

10 MR. ECKERT: I'm sorry.

11 MR. WITTELS: Stevens.

12 MR. ECKERT: I'm sorry. Stevens gun.
13 What Ms. Meehan said is absolutely factually correct.
14 The only gun he touches is the gun that's provided by
15 Mr. Stevens before Mr. Quinn leaves the store.

16 What is charged in the indictment is
17 two separate theories under 924(C). There's the store
18 gun that Mr. Smith takes. That also facilitates the
19 robbery because the robbery doesn't happen until after
20 Mr. Smith takes the gun from the store clerk. I don't
21 see why accomplice liability would not -- under the
22 same theory, the accomplice liability would apply for
23 that gun as well. Certainly, it's a different -- it's
24 a little bit of a different argument, but it's the
25 same exact instruction, would be the same exact --

1 THE COURT: Well, the store gun was
2 charged as having been stolen. It was --

3 MR. ECKERT: It's charged in both
4 counts. Yes, Your Honor. It was a 924(C) based on
5 the store gun, and the store gun is a proceed of the
6 robbery. Yes. That's correct.

7 MS. MEEHAN: Well, I'm -- I -- you're
8 charging that the store gun is a 924(C).

9 MR. ECKERT: It's in the indictment as
10 a 924(C).

11 (Pause)

12 THE COURT: Is there anything else you
13 want to say about this charge?

14 MR. ECKERT: No, Your Honor.

15 THE COURT: Have you thought of
16 tailoring a charge that I can use instead of a charge
17 that relates to only one defendant?

18 MR. ECKERT: Your Honor, I believe the
19 parties could tailor this to --

20 MS. MEEHAN: This is tailored with Mr.
21 -- between Mr. Zalsner and Mr. Swietzer because Mr.
22 Quinn is the person who doesn't have a gun. He's the
23 only one in the store who doesn't physically touch the
24 gun and take the store gun or brandish, use and carry
25 like we've seen on the video with Mr. Smith and Mr.

1 Stevens.

2 Therefore, the only way the jurors
3 could find that he is guilty of Count II is through
4 accomplice liability.

5 THE COURT: This charge is a charge
6 that would, at least from your perspective, be
7 applicable in a single defendant case in which Quinn
8 is the defendant.

9 MS. MEEHAN: No, Your Honor. They
10 can't -- he's the only one in the case, Your Honor,
11 who is unarmed. So the only way to show that he has
12 some liability for using, carrying and brandishing or
13 brandishing --

14 THE COURT: This is a charge for aiding
15 and abetting the applicable of the three defendants.

16 MS. MEEHAN: The 924(C) count.

17 THE COURT: That's what we're talking
18 about.

19 MS. MEEHAN: Right.

20 THE COURT: Count II, they argue aiding
21 and abetting with respect to the three defendants.
22 The three defendants must be subject to the
23 instruction. The instruction you've asked me to
24 insert in place of the -- my instruction 38 on
25 accomplice liability says the elements are these:

1 First, that Mr. Quinn was an active participant, but
2 not that Stevens or Smith were active.

3 MS. MEEHAN: Right. Because, Your
4 Honor, they're not liable as accomplices because they
5 possessed the guns. I mean, that part -- I'm not sure
6 how they would not -- how they would contest that.
7 It's on video. Mr. Quinn is unarmed so the gun -- his
8 liability is through being an accomplice if he meets
9 these things, if the Government's proven these things
10 to the jury or: That he was an active participant;
11 that the principals, Smith and Stevens, committed the
12 offense of using, carrying or brandishing a gun in
13 relation to a crime of violence; and that he had
14 advance knowledge, new and advanced of the robbery
15 that the principal would use, carry or brandish a
16 firearm, the principals being Smith and Stevens.

17 THE COURT: But under your instructions
18 I would not have to instruct the jury that they must
19 find that Stevens and Smith were active participants.
20 I don't think you've drafted jury instructions in
21 multiple defendant cases before. I'll look at this,
22 but I must say that you've presented more that is
23 confusing than hallucinating (sic), even though it's
24 an agreed upon charge. I just don't see this
25 instruction.

1 I think what you're trying to do, and
2 maybe you're coming to grips with the fact, that
3 aiding and abetting is very difficult to articulate in
4 the context of the charges in Count II. I found that
5 to be so. And that might mean that all of the
6 defendants ought to be subject to the aiding and
7 abetting -- to the charges in Count II.

8 MS. MEEHAN: Your Honor, that's -- they
9 can -- if Mr. Quinn didn't exist and Mr. Stevens and
10 Mr. Smith went into the store and they have guns and
11 they're on video, Your Honor would just have the plain
12 old, straight old 924(C) instruction. But because Mr.
13 Quinn is also in there and he's unarmed, which I don't
14 think is contested, the Government's theory is that he
15 aided and abetted the 924(C). So if you took Mr.
16 Quinn out of the equation, you would have a straight
17 up 924(C) that the Court's given a million times in
18 other cases.

19 But -- and they don't -- so they don't
20 need an aiding and abetting instruction, but Mr. Quinn
21 does.

22 THE COURT: Do you want to limit the
23 aiding and abetting charge in Count II to Mr. Quinn?

24 MR. ECKERT: No, Your Honor. No.

25 MS. MEEHAN: This was agreed upon

1 between Mr. Zalsner and Mr. Swietzer.

2 MR. ECKERT: We believe that's accurate
3 with regard to your client, absolutely, but I don't --
4 the indictment lists two guns. It lists the store gun
5 and two black semi-automatic firearms. So either of
6 the -- for Mr. Smith, perhaps, he would have to be a
7 principal. But certainly for Mr. Stevens and Mr.
8 Quinn, I'm not following how they're not also -- for
9 Mr. Quinn, it's the same exact legal theory. It's
10 under an aiding and abetting theory. But Mr. Stevens
11 can aid and abet the 924(C) of the store gun.

12 So we believe that to be an appropriate
13 instruction based on the facts as --

14 THE COURT: The fact that he had a gun,
15 you're relying on the store gun to convict Stevens?

16 MR. ECKERT: It's either possibility,
17 Your Honor. Either possibility would be sufficient.
18 Yes. It can be his own gun that he provided or he can
19 aid and abet the store gun if they find that -- if the
20 jury were to find that he had advance knowledge that
21 the robbery would occur after the store gun was taken
22 from the complainant and provided to Mr. Smith.

23 THE COURT: All right. Well, we'll
24 take this under advisement. This is the only
25 objection to the charges on the -- to my charge on the

1 three -- well, actually four separate charges, the
2 underlying crimes and the two aiding and abetting
3 charges; is that correct? Is that where we are?
4 Government first.

5 MR. ECKERT: I believe so, Your Honor.
6 Yes.

7 THE COURT: Mr. Patterson, I don't
8 think you're -- well, you have a horse in this race,
9 this race, the aiding and abetting race.

10 MR. PATTERSON: Correct, Your Honor.

11 THE COURT: Mr. Wittels.

12 MR. WITTELS: No objection.

13 THE COURT: Well, I'll look into it.
14 We'll have to decide this. It certainly is a charge
15 that applies to Mr. Quinn.

16 One last question is your charge, Ms.
17 Meehan, patterned on the Sixth Circuit charge?

18 MS. MEEHAN: Well the original
19 submission was a modified -- was patterned, yes, on
20 the Sixth Circuit. And I didn't have an opportunity
21 to talk to Mr. Swietzer about how he and Mr. Zalsner
22 modeled this one or came up with this particular joint
23 proposal.

24 THE COURT: And so you've changed --
25 this is a dramatic change.

1 MS. MEEHAN: This is not what I
2 submitted. I only submitted one jury instruction,
3 Your Honor, and that was on the accomplice liability
4 which was modeled on the Sixth Circuit pattern after
5 the Sixth Circuit instruction. But this one I'm not
6 sure what Mr. Swietzer and Mr. Zalsner discussed. So
7 I don't know what they -- I'm assuming some of it may
8 have been patterned after the Sixth Circuit.

9 THE COURT: Well, this charge, again,
10 going back to it, it seems to -- not seems to, it does
11 focus on Quinn as the aider and abettor. You can't
12 have it both ways. The Government argument is
13 summarized in the agreed charge. The Government
14 alleges that Quinn aided and abetted Stevens and Smith
15 in committing the offense by using, carrying or
16 brandishing.

17 In the charge, you've -- in this agreed
18 charge, I think you've agreed to limit and it makes a
19 little more sense then, but I'm not sure that I agree
20 with all of the language. But it makes a little more
21 sense to give it if that's the way you're proceeding.

22 MR. ECKERT: I'm not sure I follow.

23 THE COURT: What I'm telling you is
24 your agreed charge doesn't fit the case as you just
25 articulated it. It fits the case that is being

1 presented now by Ms. Meehan, and that is that Quinn is
2 charged with aiding and abetting the using or carrying
3 -- and it's not brandishing -- using or carrying of a
4 weapon in furtherance of a robbery committed by or --
5 in furtherance of a robbery, I guess we have to say by
6 the other two defendants. It's just what you've read.
7 Government alleges that Quinn aided and abetted
8 Stevens and Smith in committing the offense of using
9 or carrying during and in relation to a crime of
10 violence.

11 But you're not willing to agree to
12 that? So you've got every one of them as a potential
13 aider and abettor and every one of them as a potential
14 principal? That's the way you're presenting the case.

15 MR. ECKERT: I think for Count II, for
16 Count II only Mr. Smith is a principal because he has
17 both the store gun and his own gun. But Mr. Stevens,
18 we would argue to the Court that he can aid and abet
19 Count II of the store gun.

20 THE COURT: He -- but he's got his own
21 gun.

22 MR. ECKERT: Right. But there's been
23 evidence -- there's been a lot of cross-examination
24 and argument made that somehow that's not a real
25 firearm. Obviously, that's not our theory of the

1 case, but if the defense -- if Mr. Stevens is going to
2 offer the defense that the guns aren't real, we
3 believe that we have a right to argue that he also
4 aided and abetted the crime after the store gun was
5 taken by Mr. Smith.

6 THE COURT: Well, let's ask Stevens'
7 lawyer, Mr. Wittels.

8 MR. WITTELS: I don't have any position
9 on this, Judge.

10 THE COURT: Are you planning on arguing
11 that Stevens' gun was not real or that the Government
12 has not proven that it was real?

13 MR. WITTELS: I will argue to the jury
14 that they have to decide whether or not it was real.

15 MR. PATTERSON: That was my argument,
16 Your Honor, with respect to the Government's proof
17 that other than the store gun, which we know is real
18 based upon the functionality test of what was being
19 pointed before Mr. Smith got Joel's gun, whether they
20 were real. And I'm reading the jury charge right now
21 on a firearm offense defined. The term firearm means
22 any weapon which will expel or designed to or may
23 readily be converted to expel a projectile by the
24 action or explosive. How did they prove that?

25 MS. MEEHAN: Your Honor, to further

1 confuse things, in keeping with the statute, my client
2 would have to know in advance per the law that Mr.
3 Smith was going to use and carry the store gun. How
4 is that possible under any theory, under any of this
5 evidence? That would -- I guarantee, Your Honor, that
6 the jurors will be back 15 times at least with
7 questions about the aiding and abetting, where we are
8 right now because it's completely confusing and the
9 Government's theory is bonkers, really.

10 And I having -- if I had known that I
11 would have moved to sever because Mr. Quinn in terms
12 of the actual gun possession and brandishing is the
13 least culpable defendant here.

14 MR. ECKERT: The robbery happens after
15 the store gun is taken by Mr. Smith. That's advance
16 notice. It's literally exactly what's in -- it's a
17 much harder argument than the other two guns, which
18 are brandished before that, but I -- there's less time
19 clearly. But I fail to see how that's not a case that
20 would go to the jury on whether that's an advance
21 knowledge of the -- that the robbery is going to
22 happen after the store gun is taken by Mr. Smith.

23 MR. PATTERSON: The videotape also is
24 very clear that the only functioning gun, which would
25 be the store owner's gun, was put in my client's right

1 pocket and never removed. That's clear.

2 THE COURT: Well, I don't see how you
3 can say the video evidence is very clear that the only
4 operable gun is the store gun. I don't think the
5 video is clear on that at all. The video shows other
6 guns.

7 MR. PATTERSON: Correct. And my
8 argument would be that they couldn't -- they can't
9 prove that whatever they were carrying could propel a
10 projectile. Just because it looked real doesn't make
11 it a firearm. I understand for intent to cause -- put
12 somebody in fear of --

13 THE COURT: But you just said this is
14 clear from the video. It isn't clear from the video.
15 It might be an argument you can make based on the
16 evidence, but it sure as heck isn't clear from the
17 video.

18 Well, I don't think we're getting
19 anywhere on this tonight. But I can tell you that
20 looking at this proposed charge, it is not consistent
21 with what you, Mr. Eckert, have articulated as the
22 Government's theory of the case. It seems to focus on
23 Quinn as the aider and abettor, and Stevens or Smith
24 as the principals, but not as the aiders or abettors.
25 We've got to make this a little more clear in

1 presenting it to the jury.

2 Have you read this? Let me read the
3 second paragraph out loud.

4 "In this case the Government alleges
5 that Maurice Quinn aided and abetted Abid Stevens and
6 Donnie Smith in committing the offense of using,
7 carrying or brandishing a firearm during and in
8 relation to a crime of violence as charged in the
9 indictment.

10 "In order to find Mr. Quinn guilty of
11 this offense" -- because he aided Stevens and Smith in
12 committing this offense -- "you must find that the
13 Government proved beyond a reasonable doubt that each
14 -- each of the following three requirements."

15 That clearly shows -- articulates the
16 theory that Quinn is being charged as the aider and
17 abettor and not Stevens or Smith.

18 And then it goes on to say, first, the
19 first element, Quinn was an active participant in the
20 Hobbs Act robbery as charged in the indictment. I
21 thought you told me -- argued yesterday that he was
22 not an active participant and that there was a
23 question whether -- well, this requires that the jury
24 find that Quinn was an active participant. And what
25 happens if they find in Count I that he is not guilty

1 of Hobbs Act robbery? What does this do to the
2 Government's theory?

3 MR. ECKERT: Right. I mean, is the
4 Court asking about the verdict slip or the
5 inconsistent verdict or just -- I think that that's
6 accurately stated that in order to get to -- he has to
7 be an active participant in the Hobbs Act robbery to
8 be found guilty of Count II. But I still -- as I
9 stated yesterday --

10 THE COURT: Well, if -- they've got to
11 prove that to find him guilty, then Ms. Meehan argues
12 that these -- if he's found not guilty on Count I,
13 Hobbs Act robbery, then the jury should not proceed
14 further with the interrogatory on Count II.

15 MR. ECKERT: I don't believe that to be
16 an accurate statement of law based on my -- the
17 converse -- the email I received from Mr. Zalsner last
18 night.

19 THE COURT: You believe it -- you
20 believe what to be inaccurate?

21 MR. ECKERT: I don't believe that to be
22 an accurate statement of the law, that the jury should
23 not reach Count II by virtue of an acquittal on Count
24 I. I believe that the -- that charge is proposed by
25 Ms. Meehan and agreed to by the Government first that

1 Mr. Quinn was an active participant in the Hobbs Act
2 robbery. I believe that's an accurate statement of
3 the law, just to the element of aiding and abetting
4 absolutely. But I do not believe that by virtue of an
5 acquittal on Count I that they do not deliberate on
6 Count II.

7 THE COURT: Well, to acquit on Count I
8 they have to find that he was not an active
9 participant.

10 MR. ECKERT: Right. I understand what
11 the Court's saying. I'm not trying to be difficult or
12 disrespectful. I just -- that's what -- I sent Mr.
13 Zalsner both verdict slips and I said, this issue has
14 been raised. He said per the Powell case inconsistent
15 verdicts are permitted and the jury should still
16 deliberate on Count II. That's not to say there's any
17 issue with this as a statement of the law, the
18 elements as stated in the proposed accomplice
19 liability charge.

20 MS. MEEHAN: Judge, that has to be
21 wrong. I'm not disputing the holding of the Powell
22 case, but as it applies to this, if Mr. Quinn is found
23 not guilty of robbery, the crime of violence, he can't
24 be guilty of using and carry -- as aiding and abetting
25 or using and carrying or brandishing a firearm in

1 connection with robbery, a crime of violence.

2 THE COURT: Well, the way to handle
3 that is to submit -- I have two choices, to submit it
4 to the jury or not. If I don't submit it to the jury,
5 the Government is out of the box. If I do and it's
6 wrong, we can set aside the conviction. Of course
7 Quinn doesn't want that to happen, but that would be
8 better than leaving the conviction stand.

9 But that's what I would be inclined to
10 do if I conclude their might be an inconsistency.

11 All right. We've spent a lot of time
12 on this. Are there any other issues with respect to
13 accomplice liability?

14 MR. ECKERT: Not from the Government,
15 Your Honor.

16 THE COURT: Anyone else?

17 MR. PATTERSON: No, Your Honor.

18 THE COURT: All right. Then let's go
19 back to Pinkerton liability. I think it's, is it 28?
20 Yes.

21 (Pause)

22 THE COURT: I think it might be 27.
23 Any issue with respect to the Pinkerton liability
24 charge?

25 MR. ECKERT: Not from us, Your Honor.

1 MS. MEEHAN: Yes, Your Honor.

2 THE COURT: What?

3 MS. MEEHAN: Okay. Well, again, under
4 the facts of this case I'm looking at the second
5 paragraph, crimes and acts were committed to help
6 further or achieve the objective of the conspiracy.
7 First of all, there's already two problems with that.
8 It's unclear what the objective is of this so-called
9 conspiracy. There's no evidence of a conspiracy
10 because there's absolutely -- and Your Honor used the
11 best word of all this morning. Your Honor said, well,
12 it seems somewhat spontaneous because it was
13 spontaneous.

14 And then finally --

15 THE COURT: Well, spontaneous can spill
16 out over a period of however long that -- the incident
17 was videotaped. How long did it go from start to
18 finish, 20 minutes --

19 MS. MEEHAN: Ten -- no ten --

20 THE COURT: -- 30?

21 MS. MEEHAN: I would say ten or 15,
22 Your Honor. Between 4:50 and I think Mr. Stevens --
23 I'm sorry -- yeah, Mr. Stevens left at 5:05. But
24 really the other individuals had left around 5:00.

25 But then we have -- come to the

1 language of were reasonably foreseeable to Donnie
2 Smith, Abid Stevens and Maurice Quinn.

3 THE COURT: Where are you reading?

4 MS. MEEHAN: I'm sorry. I'm in the
5 second paragraph --

6 THE COURT: I see. Yeah.

7 MS. MEEHAN: And it's hard to fathom
8 what would be reasonably foreseeable to them under
9 this set of facts.

10 THE COURT: How do you answer that?

11 MR. ECKERT: The object would be to
12 take the money. I mean, it -- a conspiracy could be
13 formed in an instant. They were outside. They were
14 inside. They could absolutely form a conspiracy in
15 the instance that the three of them are outside which
16 is granted only a few seconds. When they come back in
17 and they advance upon the complainant into the back of
18 the room they can form the conspiracy then.

19 I don't -- and I think the object is
20 clear from the evidence that the object it to take the
21 money on behalf of Quinn, whether that's a taking or
22 not is obviously going to be heavily discussed. But
23 the object is -- of everyone's actions is quite clear.

24 THE COURT: And you think there was an
25 opportunity to form the required conspiracy when they

1 were all three -- when Quinn left the store and then
2 came back and -- or the three of them then came back?

3 MR. ECKERT: Yes.

4 MS. MEEHAN: But there's no evidence
5 that that happened, Your Honor, zero. In fact, they
6 could have had evidence, but they chose not to save
7 the evidence if there was any such evidence.

8 THE COURT: Well, there's evidence that
9 the three of them were out together and they went
10 back.

11 MS. MEEHAN: No, there is no evidence
12 that they were out together. That's the problem.
13 They may have been outside of the store.

14 THE COURT: They came back in rapid
15 succession. Well, I -- I'm not so sure I agree with
16 you on that subject. The evidence is not -- certainly
17 not clear. There were no meetings of record. But
18 Quinn left and in short order he came back, and
19 followed by the other two. And my recollection is
20 they followed very soon after one another.

21 MR. ECKERT: Right. So Quinn stands in
22 the door, which is why the store is not closed. It is
23 at that -- but they are -- Quinn is outside before
24 that. First of all, Quinn and Stevens when they're in
25 the store it's quite clear based on the way they're

1 talking to the complainant that they could have then
2 reached an agreement.

3 Second, just by the way the fact that
4 Mr. Smith and Mr. Stevens enter the store and
5 immediately draw their weapons, it's clear that they
6 know exactly what's going to happen when they go into
7 the store.

8 MS. MEEHAN: Your Honor, I -- that's a
9 stretch. That really is. And I think -- first of
10 all, Mr. Stevens and Mr. Quinn, sorry, are outside of
11 the store. And, again, we don't know if they're
12 together. They're outside of the store for a period
13 of two seconds. That's it. Two seconds. We know
14 from the witnesses, we don't hear any conversations
15 about anything but take -- give me my money, give me
16 my money, give me my money, and Mr. Smith is alleged
17 to have made this -- take all the money, which we know
18 doesn't happen.

19 So if that's the objective --

20 THE COURT: Well, is there any evidence
21 --

22 MS. MEEHAN: -- is to take all the
23 money, that didn't happen.

24 THE COURT: Is there any evidence, did
25 Mr. Ventura testify as to what Stevens said when he

1 was --

2 MR. ECKERT: He --

3 THE COURT: -- in the store?

4 MR. ECKERT: I'm sorry. I don't -- may
5 I?

6 THE COURT: Yes.

7 MR. ECKERT: There's evidence in the
8 record that Mr. Stevens said to Mr. Ventura, I'll be
9 back.

10 Also, in response to the point that's
11 been raised, the only reason that all the money wasn't
12 taken is because Mr. Quinn couldn't open the register.
13 There's a plethora of evidence there that Mr. Quinn
14 was trying to open the register and he was
15 unsuccessful and that's why the complainant then goes
16 back and gives him the \$100. But the --

17 THE COURT: Boy, if you think that was
18 clear from the video.

19 MR. ECKERT: I'm not saying it's clear.
20 I'm saying it's an inference that can be argued based
21 on the evidence in the record.

22 MS. MEEHAN: Your Honor, there was cash
23 on top of the register and there was more money in the
24 register. That is in the record. That's crystal
25 clear. None of that went to Mr. Quinn. \$100 in five

1 \$20 bills went to Mr. Quinn.

2 MR. ECKERT: Because he --

3 MS. MEEHAN: That's it.

4 MR. ECKERT: -- couldn't open --

5 THE COURT: That's all the money that
6 was taken.

7 MR. ECKERT: Right.

8 MS. MEEHAN: Correct. Correct.

9 MR. ECKERT: But he goes back there and
10 he tries to open the register and he can't figure out
11 how to do it. Yes, there's a dollar laying on top of
12 the register. There's a dollar or \$2. That's
13 absolutely correct. But we can argue to the jury that
14 had Mr. Quinn opened the register, he would have had
15 access to all the money. He can't do it. That's the
16 only reason he sends the complainant back there.

17 MS. MEEHAN: Your Honor --

18 THE COURT: That happens after.

19 MS. MEEHAN: But, Your Honor, if I may,
20 he -- Mr. Ventura could have been forced -- he used
21 the word forced -- to give all of the money in the
22 register. That's what normally happens in a robbery.
23 That's what normally happens. And that would have
24 been the objective is to take merchandise and money,
25 as much money as possible. That's ordinarily what the

1 common objective is in a conspiratorial robbery.

2 That's not what happened here. And -- but the most
3 important thing is there's absolutely no evidence that
4 there was foreseeability (sic) in this case because
5 there's no evidence that they did anything outside of
6 the store, that there was enough time to do anything
7 out of the store to form this agreement. That's the
8 main problem with the Government's evidence.

9 And I think this instruction is really
10 confusing and I object to the -- for a variety of
11 reasons, for achieving the objective. It's not clear
12 what the objective is. Mr. Quinn's objective is \$100
13 that was given -- that came out of the ATM machine.
14 And reasonably foreseeable, it's hard to discern what
15 would be reasonably foreseeable under this set of
16 facts to any of these defendants.

17 And then for the conspiracy there's
18 just insufficient evidence of what, if anything,
19 transpired outside of the store. If they had a text
20 message -- there's no -- not even a phone call. We
21 heard phone evidence today, Your Honor. There's no
22 phone contact between Mr. Smith and Mr. Quinn before
23 the alleged robbery. There's a phone call 20 -- 40
24 minutes after, but if there was some indication that
25 there was communication between the three of them,

1 that would be a little bit different. I would still
2 argue that there's issues with the objective and
3 what's foreseeable. But I think there are a lot of
4 problems with this instruction.

5 MR. WITTELS: Judge, if I may, this is
6 where had -- if they had gotten the video from the
7 outside camera we would have more information. But
8 they didn't. We have no idea what Quinn said, if
9 anything, when he went outside.

10 THE COURT: We would never know what
11 Quinn said, if anything.

12 MR. WITTELS: We will never -- he could
13 have said, Jay drew his gun, and they went in to see
14 what was going on.

15 THE COURT: Well -- and he could have
16 said that they took \$100 of Quinn's money. Let's go
17 get it.

18 MR. WITTELS: Could they, Judge, but
19 then we're engaging in speculation.

20 THE COURT: Both sides. But --

21 MR. WITTELS: I understand.

22 THE COURT: -- I wonder if there's
23 enough circumstantial evidence by the fact that they
24 were -- Quinn was in the store, left the store after
25 saying I'll be back, and came back very shortly

1 thereafter followed almost immediately by Smith and
2 Stevens who had guns drawn.

3 MS. MEEHAN: But they didn't have their
4 guns drawn when they went in.

5 THE COURT: Are they --

6 MS. MEEHAN: Mr. Smith did not. It
7 wasn't until he went to the very back of the store and
8 then pulled out his --

9 THE COURT: All right. Well, in any
10 event, the question is whether I submit this to the
11 jury and I don't think I'm going to take it away from
12 the jury at this stage. So --

13 MR. PATTERSON: Your Honor, I just have
14 a very brief statement. I might be very far afield on
15 this statement, but I have had cases in federal court,
16 not a lot of trials, but it's -- conspiracies are
17 usually charged in the indictment. It goes to the
18 grand jury. The grand jury --

19 THE COURT: Mr. Patterson, I am well
20 aware of that.

21 MR. PATTERSON: I understand.

22 THE COURT: I'm also aware of Pinkerton
23 liability. Are you aware of Pinkerton liability?

24 MR. PATTERSON: I believe -- I read it
25 last night so I'm -- I have a working knowledge of it.

1 THE COURT: And what it says is a
2 member of a conspiracy who commits a crime poses a
3 real problem for co-defendants who are also members of
4 the conspiracy who can be found guilty of the crime by
5 virtue of the fact that there is a conspiracy and one
6 member of the conspiracy has committed a crime.
7 That's Pinkerton.

8 And Pinkerton liability is still the
9 law. I think it unnecessarily complicates cases. And
10 as I know you heard me, I inquired whether the
11 Government would consider removing that charge which
12 would remove God knows how many pages from the charge
13 and make it a little easier for the jury to comprehend
14 the issues in this case.

15 I think the problem in the case is that
16 we've taken a simple set of facts and we made it very,
17 very complicated for the jury. And I think that
18 reduces the chance that they'll get it right or get it
19 consistent. And I know inconsistent verdicts are not
20 a problem in federal court. But I'm not happy with
21 the way the case is being presented.

22 Now making me happy is not a goal of
23 the lawyers in the case. But I just want to make it
24 as clear as possible to the jury. And I can tell Mr.
25 Eckert and I'll tell him again that this proposed

1 instruction, proposed as a joint instruction, is
2 inconsistent with what you've argued to me tonight as
3 your theory of liability, criminal liability.

4 So we'll decide what to do. We might
5 make it a little more generic than this charge.

6 Is there anything you want to fall back
7 on taking a look at my instructions, and I'm talking
8 about Pinkerton liability and aiding and abetting with
9 respect to Count II? Anything that you think needs
10 clarification?

11 MR. ECKERT: Not about those two, Your
12 Honor. I did have perhaps one other issue, but it's
13 unrelated. I'm happy to address that later.

14 THE COURT: Well, I -- we're not going
15 anywhere here tonight. You've dropped too much on me
16 at the last minute. I don't know what you were
17 thinking we would do.

18 Is there anything else on the charge
19 that needs to be addressed tonight?

20 MR. ECKERT: Your Honor, the unlawful
21 taking charge for Hobbs Act, element one, I just need
22 to look at --

23 THE COURT: And what page is that?

24 MR. ECKERT: I have the old -- I might
25 have the old copy. It was page 35, so I just need to

1 -- yes. Page 27, right?

2 MS. MEEHAN: Oh, I'm -- you're right.

3 27.

4 MR. ECKERT: I was just --

5 THE COURT: It's instruction -- I'm
6 sorry.

7 (Pause)

8 THE COURT: Yes.

9 MR. ECKERT: Right. And just that the
10 second line, I believe, should refer to the store that
11 was charged, the RD Grocery rather than naming of the
12 complaining witness.

13 MS. MEEHAN: I -- no objection, Your
14 Honor.

15 MR. PATTERSON: No objection.

16 MR. WITTELS: I agree.

17 MR. ECKERT: I just think it's
18 confusing if it has the victim's name rather than the
19 entity given that it's a commercial -- alleges a
20 commercial robbery.

21 THE COURT: And we're looking at page?

22 MR. ECKERT: 27, Your Honor.

23 THE COURT: Not page 27.

24 MS. MEEHAN: Yes, page 27. Number 23,
25 page 27.

1 THE COURT: What page is it? It's not
2 23.

3 (Pause)

4 THE COURT: Yeah. We'll certainly do
5 that. I missed that.

6 (Pause)

7 THE COURT: Does the indictment charge
8 against its will?

9 MR. ECKERT: I believe so. I don't --
10 my copy, I believe, is in the cart if I just may get
11 it, Your Honor.

12 THE COURT: We can get it.

13 MR. ECKERT: Thank you.

14 (Pause)

15 THE COURT: It says from employees.
16 That's the way they handled it. So we'll change it to
17 took property of employees of R&D Grocery -- RD
18 Grocery against their will.

19 All right. That takes care of that.

20 Any other objections?

21 MR. ECKERT: No, Your Honor. Thank
22 you.

23 THE COURT: Mr. Patterson.

24 MR. PATTERSON: No, Your Honor. Thank
25 you.

1 MR. WITTELS: Nothing, Judge.

2 MS. MEEHAN: Nothing more, Your Honor.

3 THE COURT: All right. Are there any
4 blanks that need to be filled in?

5 MR. ECKERT: I don't know that, Your
6 Honor.

7 THE COURT: Pardon me. Well, there are
8 lots of blanks. Let's go back. Page -- well, it's
9 point number 8, expert witnesses. I don't think we
10 need to include the names of the experts. Does anyone
11 disagree?

12 MR. ECKERT: I have no issue with that,
13 Your Honor.

14 MR. PATTERSON: I have no issue, Your
15 Honor.

16 THE COURT: Mr. Wittels, any --

17 MR. WITTELS: No issue.

18 THE COURT: Ms. Meehan?

19 MS. MEEHAN: No. No, Your Honor.

20 THE COURT: All right. We'll revise 8
21 to eliminate the experts by name.

22 Who does the Government believe were
23 the experts, the ATF -- the police identification
24 expert on the gun.

25 MR. ECKERT: Right, Your Honor, the FIU

1 expert and the ATF expert, both which testified today.

2 THE COURT: By the way, the ATF expert,
3 did you discuss agreeing? I've tried I don't know how
4 many --

5 MR. ECKERT: We --

6 THE COURT: -- 924(C) counts. And I've
7 never had a nexus expert testify.

8 MR. ECKERT: We proposed stipulations,
9 yes, Your Honor.

10 THE COURT: And that was rejected?

11 MR. ECKERT: I don't -- I think some of
12 the -- we absolutely proposed stipulations. The --
13 what was -- yeah. I'm not sure. I believe it was Mr.
14 Smith who didn't want to stipulate, but I don't want
15 to speak for you guys.

16 THE COURT: All right.

17 MR. ECKERT: Not today. It may have
18 been different. But when we proposed them weeks ago
19 it was reported to me that the only stipulation that
20 was willing to be entered into was the prior
21 conviction.

22 MR. PATTERSON: Correct. And the nexus
23 for the interstate --

24 MR. ECKERT: Right.

25 MR. PATTERSON: -- with the firearm.

1 MR. ECKERT: Right.

2 MR. PATTERSON: Yes.

3 THE COURT: He would not agree to that?

4 MR. ECKERT: Correct, Your Honor.

5 MR. PATTERSON: No, he would agree to
6 that.

7 MR. ECKERT: Today.

8 MR. PATTERSON: Right.

9 MR. ECKERT: Today it was reported to
10 me that potentially he may have changed his mind, but
11 we didn't have the written stipulation.

12 THE COURT: Right. Well, we'll -- the
13 evidence is in.

14 MR. ECKERT: Thank you.

15 THE COURT: We'll change the charge on
16 -- well, it's Charge Number 8 without identifying the
17 experts. And we'll talk about any experts. You will
18 argue which experts were covered.

19 Page 17 of the charge is Charge Number
20 11, stipulations. In that proposed Third Circuit
21 charge the stipulations are set forth. The way you've
22 handled stipulations is as bad as the way you've
23 handled exhibits. Many of them were not reduced to
24 writing. I don't have them. I have one. I have Mr.
25 Patterson's stipulation on the prior conviction.

1 How do you want to handle stipulations?

2 MR. ECKERT: I'm not sure, Your Honor.

3 I just would ask for a moment to think about that.

4 I'm not sure if you want to reiterate topics now or in
5 the instructions.

6 THE COURT: Well, I don't -- we don't
7 have to. What we can say is, there were a number of
8 stipulations. How are they going -- how are they
9 embodied? I haven't seen any written -- well, I've
10 seen one written stipulation.

11 MR. PATTERSON: And that stipulation
12 would be for the second part, the bifurcated --

13 THE COURT: Yes.

14 MR. PATTERSON: -- that we read to the
15 jury.

16 THE COURT: Yes. Well, how do you want
17 to --

18 MR. ECKERT: We can make a list of the
19 topics if the Court wanted, I'm fine, which the
20 Government and the defendants had agreed to that
21 certain facts are true. You should therefore treat
22 these facts as having been proved and the parties
23 would be free to argue them in their closing.

24 But if -- I'm happy to also -- we can
25 -- I'm sure counsel can get together and list out the

1 topics that were --

2 THE COURT: Well, I don't -- we sort of
3 had -- are running out of time.

4 MR. ECKERT: Right.

5 THE COURT: And you've had this charge
6 since Tuesday. And I know you're busy, but we've got
7 to do something. So to say there's nothing else that
8 needs to be done in the charge is a misstatement.

9 MR. ECKERT: I'm sure I would know some
10 of them, but I wouldn't want to say three of them and
11 miss the fourth one and that's not fair to --

12 THE COURT: Is it agreed then that we
13 should just refer generically to stipulations?

14 MR. WITTELS: I think that would be
15 best, Judge, as far as --

16 THE COURT: All right.

17 MR. WITTELS: -- as the testimony.

18 THE COURT: Have agreed that --

19 MR. PATTERSON: I was thinking out loud
20 maybe they should hear rather than generalized
21 stipulations, stipulation that the -- we all agree
22 that the people depicted on the video are our clients.
23 I think that's important that we're --

24 THE COURT: Are what?

25 MR. PATTERSON: That they're -- our

1 clients stipulated that it's them, that they didn't
2 have to present any evidence with respect to the photo
3 identification or lineups. We have stipulated that
4 the people in the video are, in fact, our clients.

5 MR. ECKERT: I would have no issue with
6 them saying -- with the Court saying exactly that;
7 that the defendants have stipulated that the people in
8 the video are their clients. But the second part of
9 that we would --

10 THE COURT: The way I would describe
11 the handling of stipulations in the case is
12 diaphanous. That means very filmy.

13 MR. PATTERSON: I was going to have to
14 look that up, but thanks for telling me.

15 THE COURT: My God. I know that
16 identification is not an issue. I had to remind Mr.
17 Wittels when he started cross-examining a witness on
18 identification right after there was a statement on
19 the record that we stipulated to identification.

20 I think what we ought to have is a list
21 of the stipulations or they ought to be reduced to
22 writing and we ought to have the -- we ought to have a
23 record and there is none. So this is a comeback to
24 point. And if this were the beginning of the trial or
25 some date prior to the trial that would be great. But

1 it's not. It should have been done before. So we
2 need stips in writing and then we'll decide how to
3 handle them. We can handle them by subject without
4 going into the details, but I want the stipulations in
5 writing.

6 (Pause)

7 THE COURT: Next, we've got to come
8 back to defendant's choice not to testify and to
9 testify. We'll wait and see what happens.

10 Smith and Stevens submitted a point per
11 charge on prior statement of non-testifying defendant
12 in multi-defendant trial. Is that in the case?

13 MR. PATTERSON: It's not, Your Honor.

14 MR. WITTELS: It's no longer pertinent.

15 (Pause)

16 THE COURT: And unlawful taking by
17 force defined, we'll change that as I stated.

18 (Pause)

19 THE COURT: By the way, I didn't mean
20 to cut off the defense argument on the Pinkerton
21 liability. But if you can find one case that says the
22 Court should not charge the jury where the evidence of
23 conspiracy is thin, but there's some evidence that the
24 Government can argue is a basis for Pinkerton
25 liability, that -- where there is a certain level of

1 evidence the Court should not so charge, I would be
2 delighted to agree with you. Right now you've shown
3 me nothing.

4 MS. MEEHAN: Very well.

5 THE COURT: And aiding and abetting, I
6 think you've -- we've done enough. I have to go -- I
7 have to do some homework.

8 (Pause)

9 THE COURT: Take a look at the charges,
10 Point 24. It's page 30, the second paragraph. It
11 involves Ventura. And it says, your decision whether
12 Smith, Stevens and Quinn used or threatened fear of
13 injury, and this is the object charge, involves a
14 decision about Joel Ventura's state of mind at the
15 time of Smith, Stevens and Quinn's actions.

16 I think that -- I'm just calling it to
17 your attention. I think it's appropriate.

18 Government have any comment about it?

19 MR. ECKERT: Whether it's appropriate
20 to use his name there, Your Honor?

21 THE COURT: Well, we have to -- well,
22 we have to use someone's state of mind. I don't want
23 to go back to the beginning.

24 MR. ECKERT: No. I think it makes
25 sense the way the Court had drafted it.

1 THE COURT: Is there any issue with
2 respect to that second paragraph of the Hobbs Act
3 charge on Element 1, clear injury? I think it's okay.

4 (Pause)

5 THE COURT: Maybe we have to add
6 Sanchez or the store owner. There is evidence --
7 Sanchez said he was -- well, he felt threatened. I
8 think that was his word.

9 MR. ECKERT: Your Honor, I guess it
10 would meet the element if it was either Mr. Sanchez or
11 Mr. Ventura, but I wouldn't -- I do not think Ms.
12 Rodriguez would apply because she was not in the store
13 at the time of the robbery.

14 MR. PATTERSON: I would agree with
15 that.

16 THE COURT: So we'll change that to a
17 decision about the state of mind of Joel Ventura and
18 Emanuel Sanchez. I don't think we need any more but
19 -- description than that, at the time Smith -- at the
20 time of Smith, Stevens and Quinn's actions. And in
21 the last sentence of that paragraph whether Joel
22 Ventura or Emanuel Sanchez was in fear and whether the
23 fear was reasonable.

24 All right. Is there anything else,
25 Ryan?

1 (Pause)

2 THE COURT: Well, what all this is
3 telling me is that you're not really prepared for the
4 charging conference tonight. There are lots of blanks
5 that need to be filled in that we were supposed to
6 fill in at the second part of the charging conference.
7 And we didn't -- we're not doing it.

8 Let me go to -- it's page one of the
9 Pinkerton charge, 35. On page 2 of that charge, page
10 36, there's some bracketed portions. We forgot to
11 include in that Pinkerton charge one or more of the
12 other members of the conspiracy. I think we should
13 still -- we should say including one of them.

14 MS. MEEHAN: What line in the charge
15 are you referring --

16 THE COURT: I'm on page 35, the second
17 element of the Pinkerton charge, second line from the
18 bottom of that page.

19 MS. MEEHAN: Oh, I see. I apologize.
20 Thank you.

21 THE COURT: What this tells me is we're
22 probably not going to end up charging tomorrow.

23 (Pause)

24 THE COURT: I wonder why -- the word
25 other doesn't work there.

1 Mr. Eckert --

2 MR. ECKERT: Yes, Your Honor.

3 THE COURT: You're not on vacation.

4 This Pinkerton charge doesn't work and you were
5 responsible for presenting a Pinkerton charge because
6 you're really the motivating factor behind including
7 it. It doesn't work, so it's going to have to be
8 carefully analyzed. We're going to have to have
9 another conference tomorrow. I don't want to do it,
10 but we're going to have to.

11 Right now it reads, page 35, second,
12 that while Smith, Stevens and Quinn were still members
13 of the conspiracy, one or more of the other members of
14 the conspiracy. Well, there were no other members of
15 the conspiracy. And adding the words, including one
16 of them makes no sense because we've used the word,
17 other. So we have to take out the word other, it's a
18 very critical word, and then it works.

19 I think we're going to have to re-visit
20 tomorrow the Pinkerton charge, the conspiracy charge
21 to make sure it all works, and the -- again, the
22 aiding and abetting charge with respect to Count II.
23 I don't know that we can get anything else
24 accomplished tonight.

25 Does everyone in the courtroom have the

1 revised charge, the Tuesday charge?

2 MR. ECKERT: I do, Your Honor.

3 THE COURT: Well, we'll make extra
4 copies if you don't. We're not going to do it
5 tonight. We'll make extra copies for use tomorrow.

6 Do you have one, Mr. Patterson?

7 MR. PATTERSON: No, Your Honor. I have
8 the -- apparently I'm a page off of what we've been
9 discussing.

10 THE COURT: No. But there were
11 changes.

12 MR. PATTERSON: I understand. I don't
13 have those.

14 THE COURT: Mr. Wittels?

15 MR. WITTELS: Do I have a charge -- a
16 copy of your revised charge?

17 THE COURT: Yes.

18 MR. WITTELS: Yes, I do.

19 THE COURT: Okay.

20 MR. WITTELS: Right here on my phone.

21 THE COURT: Ms. Meehan, do you have the
22 revised charge?

23 MS. MEEHAN: I think so, Your Honor,
24 but I managed to somehow --

25 THE COURT: Well, they're dated.

1 MS. MEEHAN: -- mix it up.

2 THE COURT: Oh, that's --

3 THE CLERK: January 28th is the most
4 recent.

5 MS. MEEHAN: Was that emailed to us?

6 THE CLERK: Yes.

7 MR. WITTELS: Yeah, it was.

8 MS. MEEHAN: Okay.

9 THE CLERK: It was emailed Wednesday
10 morning.

11 THE COURT: Hold on. We know you got
12 it.

13 MS. MEEHAN: Yes. Oh, I certainly did,
14 Your Honor. Yes.

15 THE COURT: I'm talking about whether
16 it's here in court.

17 MS. MEEHAN: No. I'm -- I -- well, it
18 is, but I've been sort of shuffling between mine and
19 yours and --

20 THE COURT: All right. Well, before we
21 leave the charge, what remains to be done tomorrow?
22 We're going to decide -- I guess we still have to
23 decide on whether Smith will testify.

24 MR. PATTERSON: Correct. And I'll have
25 that answer as soon as possible. As I understand it,

1 the Government's last witness is going to be five
2 minutes and then if my client doesn't testify I won't
3 be putting anything on my side of the case. I don't
4 know what the other -- my other colleagues are going
5 to do.

6 THE COURT: Well, if that happens, and
7 Mr. Wittels has already said his client is not going
8 to testify. And, Ms. Meehan, you don't know yet.
9 I'll -- we'll go over the motions in limine. The
10 testimony might finish mid-morning, maybe a little
11 later. We're starting at ten.

12 MR. PATTERSON: And that's another
13 issue. I was informed that my client would be
14 available in the marshal's office hopefully by 9:00
15 tomorrow. I'm hoping an hour should be fine for me to
16 discuss his right to testify. I will attempt to get
17 that done in an hour.

18 THE COURT: All right. Well, we'll get
19 to work on the charge tonight.

20 All right. I think maybe we're ready
21 to turn to the motions in limine. And I think we can
22 be brief.

23 (Pause)

24 THE COURT: All right. I don't really
25 need argument. I'm going to confirm what convictions

1 are extant and I think I can rule on that in that way.

2 There are three motions in limine,
3 Documents 84, 85, 86. Ms. Meehan responded, Document
4 90. In ruling on a motion in limine, we're talking
5 about a motion in limine to exclude evidence of prior
6 convictions in order to impeach -- well, the reason
7 for the evidence would be to impeach the defendants
8 should they testify in trial.

9 Federal Rule of Evidence 609(a)(1)
10 provides that evidence of a prior conviction must be
11 admitted in a criminal case in which the witness is a
12 defendant if the probative value of the evidence
13 outweighs its prejudicial effect to that defendant.
14 In deciding that issue, the Court must determine the
15 following: One, the nature of the prior crime.

16 And in deciding that, the courts
17 consider the impeachment value of the prior conviction
18 as well as its similarity to the charged crime. If it
19 is similar to the charged crime, the -- well, that
20 weighs substantially against admissibility.

21 The Court must consider also the age of
22 the prior conviction, the importance of the
23 defendant's testimony, and the importance of the
24 defendant's credibility.

25 Cases have held and I have held that

1 where the past conviction was basically the same, or
2 was substantially the same crime as the crimes
3 charged, the prior conviction would be excluded. I
4 ruled that way at least twice. I don't know that you
5 need the cites. United States versus Camacho was one,
6 Westlaw 5069866 at *3, EDPA, December 6th, 2010. The
7 second case, United States versus Cherry, 210 Westlaw
8 3156529 at *6, my case again, August 10th, 2010. That
9 must have been a big year for government efforts in
10 impeachment.

11 All right. I don't think the law is in
12 dispute, but I want to know with respect to each
13 defendant the crimes of conviction and I'll rule.

14 MS. MARTIN: If I may, Your Honor.

15 THE COURT: You may.

16 MS. MARTIN: In the motion -- and I
17 apologize. I realize they are not numbered. Section
18 3 for Mr. Quinn is --

19 THE COURT: Let me turn to my summary
20 of that. Yes. He was -- he pled guilty. My notes
21 tell me he pled guilty to four counts of robbery and
22 one count of possessing a firearm during a crime of
23 violence --

24 MS. MARTIN: Yes, Your Honor.

25 THE COURT: -- in 2006.

1 MS. MARTIN: Yes. And he was -- he
2 served -- well, he received I believe a sentence --

3 THE COURT: Two to five.

4 MS. MARTIN: Yes.

5 THE COURT: Two to five years.

6 MS. MARTIN: And then there's another
7 --

8 THE COURT: Yes. He pled guilty to
9 possession of a firearm --

10 MS. MARTIN: Uh-huh.

11 THE COURT: -- by a prohibited
12 individual.

13 MS. MARTIN: Yes, Your Honor.

14 THE COURT: And possession of a firearm
15 with a manufacture number altered, and was sentenced
16 to 11 and a half to 23 months.

17 Applying my rule, I would exclude that
18 evidence unless you think there's compelling argument
19 in favor of receiving that evidence.

20 MS. MARTIN: Your Honor, with regard to
21 the robbery I understand its similarity to the crime
22 charged here obviously. But the firearms violation, I
23 mean, this entire case comes down to weighing the
24 credibility of the victims that testified, and if Mr.
25 Quinn chooses to testify, his credibility. I mean,

1 the immigration status of our witnesses have been
2 questioned, their credibility has been questioned.

3 THE COURT: Well, the immigration
4 status was questioned out of the presence of the jury.

5 MS. MARTIN: Right. I thought that Mr.
6 Wittels and Mr. Patterson made issues of his ability
7 to speak English, when he came to the country, how he
8 came to --

9 THE COURT: I think --

10 MS. MARTIN: -- the country.

11 THE COURT: Not how, but when. I'm
12 still puzzled as to the 20 minutes Mr. Wittels spent
13 trying to get the defendant to admit the date on which
14 he came to the country. I suspected it was because he
15 was testing his fluency with English, but I don't have
16 an answer to that question.

17 But I don't think what you're arguing
18 to me now withstands the 403 test.

19 MS. MARTIN: I understand, Your Honor.

20 THE COURT: I -- so with respect to
21 Defendant Quinn, I find that the probative value of
22 the evidence is exceeded by the prejudice to Mr.
23 Quinn. And so those two convictions for Mr. Quinn
24 will be excluded. The Government's motion in limine
25 with respect to Mr. Quinn is denied.

1 MS. MEEHAN: Thank you, Your Honor.

2 THE COURT: The other defendants, we'll
3 take Stevens next. In 2001 he was arrested and
4 charged with multiple firearms violations, found
5 guilty and sentenced to 11 months, 15 days to 23
6 months confinement and five years probation. And he
7 violated his probation numerous times so he was in
8 custody for a lot longer than the initial sentence.

9 That conviction is similar to the prior
10 crime. It's similar to the crime charged and that
11 certainly weighs against admission.

12 I think with all of them, the factors
13 are going to be the same. The evidence of the prior
14 crime argues against admission, the similarity to the
15 prior crime is what I'm focused on. The fact that the
16 convictions are old argues against admission. The
17 importance of the defendant's testimony and
18 credibility favor admission.

19 But with nothing more and with those
20 multiple firearms violations in 2001, I conclude
21 weighing the four factors that those firearm -- that
22 firearm conviction should not be received.

23 Now Stevens was arrested and charged
24 with multiple firearm violations in 2007, found
25 guilty, sentenced to a longer term. And for the same

1 reasons I'm going to exclude those convictions.

2 Finally, Smith, he -- I didn't realize
3 this was his second conviction. This is his second
4 charge.

5 MS. MARTIN: Yes, Your Honor.

6 THE COURT: Only one prior conviction.
7 He was convicted of possession of a firearm by a
8 convicted felon in 2012. And in 2013 was sentenced to
9 imprisonment for 46 months and three years of
10 supervised probation. Was that in this court, by the
11 way, do we know?

12 MR. ECKERT: It was, Your Honor. That
13 -- he has other offenses, but that was the only one
14 that we submitted for potential impeachment.

15 THE COURT: That was not my case, was
16 it?

17 MR. ECKERT: No. It was Chief Judge
18 Sanchez, I believe, Your Honor.

19 THE COURT: All right. I think in this
20 case as with the others the four factors weigh as I've
21 stated. The nature of the prior crime and the --
22 well, not so much the age, but the nature of the prior
23 crime is the touchstone of my decision. I think that
24 argues against admission. The crime is not so old as
25 to warrant exclusion on that ground. And the

1 defendant's testimony and his credibility are
2 certainly important in this case.

3 So with respect to all of the motions,
4 the three motions, it's the similarity between the
5 crimes of conviction and the crimes charged in this
6 case that lead me to conclude that the motions in
7 limine should be denied.

8 I rule that the probative value -- let
9 me get Rule 403 out. I want to make sure I use the
10 exact language. I think it's the probative value is
11 exceeded by the danger of unfair prejudice.

12 Ms. Meehan, don't leave when --

13 MS. MEEHAN: I'm sorry. I'm not.

14 THE COURT: -- I'm giving a mini-
15 lecture on unfair prejudice because you've argued that
16 what the Government is trying to do is prejudicial.
17 As far as I can determine, prejudice alone is not
18 enough in a criminal case. Everything offered against
19 a defendant is prejudicial.

20 MS. MEEHAN: True, but it has to be
21 relevant.

22 THE COURT: It's unfair prejudice. And
23 in connection with Rule 403 -- I'm told that it's Rule
24 609 and not 403. Rule 609 which is the rule governing
25 the admission of these convictions provides that

1 evidence of the conviction is admissible only if its
2 probative values supported by specific facts and
3 circumstances substantially outweighs its prejudicial
4 effect.

5 And I find that the probative value of
6 the convictions offered as evidence, the credibility
7 of the defendants should they take the witness stand,
8 the probative value is not substantial -- does not
9 substantially outweigh its prejudicial effect. I
10 think that if the jury finds that these three
11 defendants have been convicted of drug -- of gun-
12 related crimes, the prejudice far exceeds any
13 probative value.

14 MS. MARTIN: Understood. Thank you,
15 Your Honor.

16 THE COURT: All right. Is there
17 anything else we have to do tonight?

18 MR. ECKERT: No, Your Honor.

19 MR. PATTERSON: I would just inquire if
20 my client doesn't testify, does Your Honor think we'll
21 be closing tomorrow or --

22 THE COURT: We might close tomorrow. I
23 think I have to, before you close I've got to finalize
24 issues with respect to the charge.

25 MR. PATTERSON: Right.

1 THE COURT: Not necessarily the
2 language of the charge. And if I can do that, the
3 answer is yes because the charge is long with the
4 number of charges against the defendant. The issues
5 that need to be presented is long. It will take at
6 least two hours, I think, and maybe more. And I want
7 to try to end the case on Monday.

8 So the answer is, yes. I would give --
9 there would be a break after -- well, we'll have a
10 little testimony tomorrow. But there would be a break
11 after that if your client does not testify. So we
12 would start the closings either late in the morning or
13 early in the afternoon.

14 MR. PATTERSON: Thank you, Judge.

15 MR. ECKERT: Your Honor, may I provide
16 two documents? We received a waiver, the
17 determination of forfeiture by the jury from two of
18 the defendants and we expect the third one tomorrow.
19 I would just ask to provide that to your staff.

20 THE COURT: Fine.

21 MR. ECKERT: May I, Your Honor?

22 THE COURT: Yes.

23 MR. ECKERT: Thank you.

24 THE COURT: Now must these -- how
25 should these be addressed?

1 MR. ECKERT: So it's just a -- I
2 believe it would allow the Court to make the
3 determination if a guilty verdict is reached that
4 forfeiture -- the Court could determine forfeiture.
5 It just deals with the forfeiture of the firearm. And
6 I believe the \$100 is also charged in the forfeiture,
7 but that's really an issue of if there's -- if there's
8 a guilty verdict there would be restitution. If not,
9 there wouldn't be.

10 THE COURT: Do I have to approve these
11 waivers?

12 MR. ECKERT: I don't know that the
13 Court specifically needs to do anything. It's just I
14 -- they have a right to a jury trial on the forfeiture
15 itself if there's a guilty -- it would be after the
16 guilty verdict. There would be a forfeiture
17 proceeding that would have to go to the jury unless
18 they waive it. But I believe they're okay with the
19 Court doing it.

20 THE COURT: All right. Remind me again
21 and we'll have to address this if there's a guilty
22 verdict.

23 MR. ECKERT: I will, Your Honor.

24 THE COURT: And we'll await Mr. Smith's
25 waiver. Do you have that form? Is he going to agree

1 to that?

2 MR. PATTERSON: I didn't broach the
3 subject with him based upon what happened. I will do
4 that first thing in the morning, Your Honor.

5 THE COURT: All right. Is there
6 anything else we can do tonight?

7 MR. ECKERT: No, Your Honor. Thank
8 you.

9 MR. PATTERSON: Thank you, Your Honor.

10 MS. MEEHAN: No, Your Honor.

11 THE COURT: We're adjourned.

12 MR. WITTELS: No, Judge.

13 THE COURT OFFICER: All rise.

14 (Proceedings concluded at 7:01 p.m.)

15 * * * * *

CERTIFICATION

I, Sherri L. Breach, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



SHERRI L. BREACH, APPROVED TRANSCRIPTIONIST

Dated: November 19th, 2020

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[47 - abetting]

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